Supreme Court, U.S.
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Docket No. 09-843 OCT 14 2009

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THE SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA, et al.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is there a time limit as to how long judges in courts may deliberately refuse to allow parties to proceed with their case without denying the litigants blocked by the stalling access to the courts in violation of their fundamental constitutional rights?
2. Is that time exceeded at 10, 20 or 23 years, just when?
3. Was that time limit exceeded here?
4. May judges of a court, in order to avoid embarrassing a fellow judge for a questionable decision should it receive scrutiny, simply sit on the claims and defenses of litigants for years, refusing to act upon them at all and then when that original judge retires, "encourage": those litigants to go away and, when they refuse, simply keep on denying them any action on their claims and defenses and do so without denying them their fundamental right of access to the courts?
5. Must access to the courts and to justice be adequate, effective and meaningful or may it just be a pretense?
6. Does such concerted inaction by judges deprive litigants of their right to trial by jury?
7. Do we have a Rule of Law or of men and women, men and women protecting each other when judges simply refuse to act for year after year and other judges refuse to do anything to correct the inaction?

8. Is a refusal by judges to act year after year an "act or omission" taken in their judicial capacity as to immunize them from suit?

9. Is such a refusal to act an act or omission that is "taken" within their judicial capacity in so as to immunize them from liability of any sort under 42 U.S.C.§ 1983 or from fees and expenses under 42 U.S.C.§ 1988?

10. What about declaratory relief in such a situation?

11. What about prospective injunctive relief in such a situation; what about monetary damages; what about counsel fees and expenses under 42 U.S.C. § 1983 and § 1988?

12. Where one judge of a municipal court declares a decree may another judge of the same court then ignore and contravene and violate that declaratory decree and not become liable under 42 U.S.C. § 1983?

13. In such a situation does not "declaratory relief" become unavailable within the meaning and intendment of the Ku Klux Klan Act, when it is sought and the requests are ignored for years so that liability under 42 U.S.C. §1983 is created?

14. Does not the language in 42 U.S.C. § 1983 that "For the purposes of this section, any Act of Congress exclusively applicable to the District of Columbia shall be considered to be a statute of the District of Columbia" mean what it says and thus effectively override the decision of this Court in *Blackmar v. Guerre*, 342 U.S. 512 , 514-515 (1952) or does that

decision somehow override a specific Congressional enactment that was meant to override it as held here by the United States Court of Appeals?

15. May a U.S. Court of Appeals base an opinion squarely upon an opinion by a U. S. District Judge so as to be clearly mistaken in that the opinion it relies upon does not even deal with the point it purports to be making but an entirely different set of points not at issue and then refuse to correct such an obvious mistake without abusing its discretion?

16. May the above things be done without depriving the petitioners of their right of due process inasmuch as process of any sort is completely denied so that justice denied is justice denied ?

17. Were the following decisions of this Court contradicted or ignored by the United States Court of Appeals so as to violate the fundamental rights of the Petitioners:

a. *Boddie v. Connecticutt*, 401 U.S. 371 (1971)?

b. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982)

c. *Armstrong v. Manza*, 380 U.S. 545 (1965)

d. *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)

e. *Brillhart v. Excess Ins. Co. of America*, 36 U.S. 491 (1942)

f. *Moses H. Cone Memorial Hospital v. Mercury Const. Corp.*, 460 U.S. 1 (1983)

18. May a court system deny access and justice to a Vietnamese set upon by other Vietnamese when he files counter and third-party claims against another Vietnamese who has baselessly sued him in violation of a settlement agreement and who heads up a would-be ethnic mafia which the subject Vietnamese, aided by two non-Vietnamese Americans takes a stand against when a judge initially incorrectly and erroneously acts as a prosecutor for the would be mafia in an embarrassing way on the theory that all Vietnamese are liars and not deserving of the processes of the judicial system and do so without violating the civil rights laws? May, in other words, courts grant injustice to an ethnic and racial minority group member and then refuse justice to the ethnic and racial group member injured by that injustice and those assisting them when they seek it through defenses, and counter and third-party claims?

PARTIES

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The DISTRICT OF COLUMBIA
COURT OF APPEALS
500 Indiana Avenue, NW
Washington, D. C 20001

THE PANEL OF JUDGES
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS in their
official capacity as setters of case
management policy in their decisions
en banc and as three judge panels

THE BOARD OF JUDGES OF
THE DISTRICT OF COLUMBIA
500 Indiana Avenue, NW
Washington, D. C. 20001

ERIC T. WASHINGTON, Chief Judge,
District of Columbia Court of Appeals,
in his official capacity as
setter of judicial policy and practice
for the District of Columbia
Court of Appeals,
500 Indiana Avenue, NW
Washington, D. C 20001

and

HERBERT B. DIXON, JR.
Judge, Superior Court
of the District of Columbia,
in his official capacity as judge to whom
the case at issue is presently assigned,
500 Indiana Avenue, NW
Washington, D. C 20001

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CITATION STATEMENT

(d) This case was unreported in the United States Court of Appeals for the District of Columbia Circuit by specific direction and so far as petitioners are aware is otherwise unreported and there are no citations.

JURISDICTIONAL STATEMENT

(e) The basis for jurisdiction in this court:

(i) Date of judgment: May 1, 2009

(ii) Date of denial of reconsideration: July 16, 2009

(iv) Petitioners believe that this Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

(f) The constitutional provisions at issue include the Article IV Privileges and Immunities Clause, the First Amendment Right to Petition Clause, the Fifth Amendment Due Process Clause, the Seventh Amendment Right to a Trial by Jury Clause and the Fourteenth Amendment Equal Protection and Due Process Clauses. The statutes involved include the Ku Klux Klan Act, 42 U.S.C. § 1983, the Civil Rights statute 42 U.S.C. § 1985 and also 42 U.S.C. § 1988. The provisions and statutes are set out in the Appendix.

STATEMENT OF THE CASE

The plaintiff and petitioner Hoai owned a Sunoco service station franchise on Pennsylvania Avenue SE in Washington, DC. A group of would be-mafia fellow Vietnamese, in the guise of lending him money to help him acquire and start the franchise (a purported loan that turned out never to exist) took over the station by threats of physical violence against him and his family. See complaint starting at ¶¶ 25-32 Urged by Sunoco to take back his franchise or lose it he enlisted the help of the Hemenways, father and son, the other plaintiffs/petitioners in this case. The three of them drew up a formal notice to quit the premises and had it endorsed by the Sunoco area representative certifying that he, Hoai, was the franchisee. Hoai and the Hemenways entered the station and showed their notice. All of the Vietnamese who were there left, peacefully, as established by the presence of the police, who had come.

At the time the leader of the would-be Vietnamese mafia, one Thanh Van Vo (Vo), was not there. It turned out that he was in Toronto, Canada on unknown business. After the Vietnamese who were in the station under Vo left, the present plaintiffs Hoai and David Hemenway stayed in the station the rest of that day and overnight. The next morning Vo came into the station with a gang of Vietnamese, some brandishing weapons, and a knife. Hoai and David Hemenway locked themselves in the

small station building and called 911. Vietnamese besiegers were trying to break through the roof and the rear of the building. The police arrived and also John Hemenway, David's father. A lawyer for Vo, Michael Arif, also came. After a confrontation and conversation, the parties agreed that they would meet at the station again the next day in the presence of the Sunoco Area Representative, one Ernie Peele. First Am. Compl. ¶¶ 43-62.

The following day the parties met at the station in the presence of Ernie Peele, who announced that Hoai was Sunoco's franchisee. Instead of abiding by the agreement to go by the word of Peele, as agreed, Vo's lawyer stayed behind briefly, purportedly to take inventory, while Vo, without revealing his plans, went to a law firm, Jones, Day, Reavis and Pogue, and gave them money from the station's proceeds as a retainer and had them draw up a complaint against the plaintiffs consisting of trumped up charges and sued the three plaintiffs in this case in the Superior Court along with Sunoco also as a co-defendant with the three present plaintiffs, Hoai and the two Hemenways. Vo as the plaintiff in that case sought and obtained a TRO based on a tort of "wrongful eviction" that he had not pled. It was inserted into the hearing by the Superior Court judge, whose private practice before going on the bench, had focused on that tort. First Am. Compl. ¶¶ 56-98.

While the TRO was in effect, Sunoco switched sides and gave the station to Vo in what would later

be found in the United States District Court on summary judgment to be an illegal termination under the PMPA. Hoai and the Hemenways counter-sued Vo in the Superior Court of the District of Columbia and sued Sunoco and Vo's colleagues in his would-be Vietnamese ethnic Mafia as third-party defendants. These claims included federal claims of civil rights violations under 42 U.S.C. § 1983, which were taken to federal court after being split out at pursuant to a declaration (2 actually) by a Superior Court judge where they were ultimately found to not have merit because no state actors or state actions were alleged (See *Hoai v. Vo*, 935 F.2d 308 (D.C.Cir.1991) (The present defendants had not at that point made clear their determination to deny us any access to their justice system.) and also a federal claim against Sunoco as having violated the PMPA with an illegal termination. The PMPA claim was also split out pursuant to declarations (2) by a Superior Court judge and taken to federal court where a victory against Sun by the undersigned Thanh Vong Hoai resulted. See *Hoai v. Sun Refining and Marketing Company, Inc.*, 866 F.2d 1515, 1519-20 (D.C.Cir.1989) where this Court took notice of one of the declarations by the Superior Court judge of which we speak. No actions have been allowed on the non-federal counter and third party claims for over 23 years. First Am. Compl. ¶¶ 101-148

Thanh Van Vo, filed over 23 years ago. No hearing on these counterclaims has ever been held by any of the defendants herein and plaintiffs' attempts

at discovery into them were blocked repeatedly. During that time there have been numerous motions filed requesting that the Superior Court declare the claims of Vo against the plaintiffs herein invalid, stay the case because of the breach of the settlement agreement to abide by the word of Ernie Peele and so forth. There was a motion with extensive attachments showing that the plaintiff against the undersigned in the Superior Court, Thanh Van Vo, had agreed to settle matters between himself and the plaintiff and petitioner herein, Thanh Vong Hoai, in August of 1986 at the gas station in question and brought suit against all three of the undersigned in violation of that agreement immediately thereafter in violation of that settlement agreement. That motion was filed on August 25, 1989 and was never answered. No action has been taken on it to this day, over 20 years later, although if granted it would have ended the claims against the three of us and cleared the way for our counter and third-party claims if the defendants had not been determined to prevent us from any meaningful access to their justice system.

The recorded testimony of the breached settlement agreement to abide by the word of the late Ernie Peele, then the Sun Area Representative, is on record in the Superior Court proceedings. No declaratory relief has even been granted and all motions and requests except for one by have never even been mentioned although those by the undersigned were fully briefed years ago. And, with regard to that one, a Rule 12(b)(6) dismissal motion

filed while the case was removed to federal court, the judge refused to examine it and merely put it off saying it would be deferred to allow for discovery which discovery was in fact not allowed to plaintiffs, even despite an order at one point to compel the deposition of the Superior Court plaintiff against us, Than Van Vo. First Amend. Compl. ¶¶ 154-162 and 203-246

Twice, at hearings, a Superior Court judge suggested to the present petitioners, Hoai and the Hemenways, that they should split their claims into local and federal claims and try the latter separately in the federal court while the local claims were stayed in the Superior Court to be litigated upon completion of the split-out proceedings in the federal court as "what was left" once federal court proceedings were over. First Amend. Compl. ¶¶ 163-171.

Hoai and the Hemenways followed this suggestion and split their claims into local and federal claims and tried their federal claims in the federal court. The three of them lost their civil rights claim because, as stated, there were no state actor defendants and no state action or color thereof. Hoai won his PMPA case against Sunoco in the federal court below. Upon the completion of those matters the parties re-opened those matters in the Superior Court but have not been able to get any action upon their claims for what is now over 23 years total. In the meantime Vo, the plaintiff in the Superior Court

disappeared, reappeared, and now has disappeared again. A third party defendant, Minh, reportedly returned to Vietnam and tried to deal with the government there, and was beheaded and cut up for his pains. A comprehensive motion to dismiss the Superior Court case against us brought by Thanh Van Vo in 1986, which we filed upon our finishing matters in federal court pursuant to the declarations of the Superior Court judge has never even been looked at. It was fully briefed and has never been ruled upon now for over eleven years, having been filed by us May 2, 1998. First Amend. Compl. ¶¶ 202-232

The only action has been that upon the plaintiffs returning to the Superior Court and reopening matters there, a Superior Court judge, who was a friend of Sunoco's counsel, dismissed Sunoco as a third-party defendant upon Sunoco's motion to dismiss those claims because the plaintiffs had split their claims just as they had been asked to do by a Superior court judge. This was granted initially without allowing the plaintiffs time to reply to that motion and the Superior Court judge, Dixon, a defendant herein, refused to ever acknowledge that the plaintiffs had been asked to split their claims by his own court and thus had been "mousetrapped." First Amned. Compl. ¶¶ 218-226.

There matters remain, with even an intervening request for a status conference unacted upon. At one point the defendant judge Dixon did

call the plaintiffs into his chambers and asked the plaintiffs to go away but they declined to do so. First Amend. Compl. ¶¶ 227-234

Thus the plaintiffs/petitioners, after years of such inaction, brought suit in the court below for violation of their civil rights and the denial of access to any resolution by the municipal courts of the District of Columbia by the courts, the judges involved, and the panels of judges that administer the local courts.

In the United States District Court none of the arguments and contentions of the plaintiffs/ petitioners were taken seriously or treated with any analysis. Instead the judge assumed that plaintiffs/petitioners were asking him to overturn decisions by the defendant judges of the municipal courts although no such request was ever made. Judge Leon did not specify any such decision nor could he have. For no defense or claim of the plaintiffs/petitioners was ever ruled upon in the municipal court and has not been rule upon to this day.

Judge Leon in the United States District Court also relied upon the decision of this Court in *Blackmar v. Guerre*, 342 U.S. 512, 514-15 (1952) to hold that he would dismiss our claim because we had sued in the wrong name. In doing so he ignored the fact that Congress had amended 42 U.S.C. § 1983 after that decision to specifically repudiate its

holding about District of Columbia agencies being sued by their name and also ignored our right to amend to correct such errors. The Court of Appeals engaged in precisely similar behavior, even to ignoring the 1970 amendment to the Ku Klux Klan Act and its clear language. The only thing that the Court of Appeals did differently was to, during an early interlocutory appeal on a denial of injunctive relief, to completely and mistakenly rely upon the wrong decision below in making its decision and then refuse to correct its clear mistake. In its decision of January 11, 2006, during this interlocutory appeal, the panel based its decision that no federal court has ruled as argued by us on a decision by Judge Oberdorfer in the Hoai PMPA case which it cited as *Hoai v. Sun Refining and Marketing Co., Inc.*, 1990 U.S. Dist. LEXIS 13015 (D.D.C.Oct.1, 1990). In fact that decision had nothing to do with and did not discuss that issue and in fact was a summary judgment victory for us that cannot have conceivably been the basis for the decision which the appellate panel was basing upon it.

Thus, simply put the case is one where the municipal courts have denied us any meaningful, effective and adequate access by doing nothing on any of our defenses and claims for what is now over 23 years and the federal judges to whom we turned to do something about this deprivation of our basic rights decided that they would prefer to protect their fellow judges rather than apply the Rule of Law and enforce or, for that matter, even seriously examine

our fundamental rights under the Constitution upon which our Rule of Law is based.

The basis for the jurisdiction of the District Court was that we brought out suit there for federal questions, consisting of violations of our rights of access to the courts, due process and trial by jury and for violation of our federal rights under 42 U.S.C. §§ 1983, 1981 and 1988.

ARGUMENT

It does not appear that this Court has ever considered the issue or situation where members of municipal court system, judges and administrators, have just decided that they will simply refuse parties sued within their system to be able to have any decisions made on their defenses, their counter-claims or their third-party claims as filed when they have been sued in that court system. This refusal to grant any process of the courts to go forward has now gone on for over 23 years and it appears will continue for years to come, perhaps in the hopes that we either die or give up on insisting on our fundamental right of access to the courts. It does not appear that this Court has ever considered a case where parties were taken into courts against their will, and, even, in this case, against a settlement agreement that we would not be sued, and then when those parties sought to defend themselves and to counter and third-party sue, the judges and personnel of the court and its appellate court and the officials in charge of it

decided that they would cooperate to see that no defense raised would ever be considered and no counter and third-party claims that we made would ever be considered. This treatment was aggravated in this instance because it was intended to assure that a judge who made an inept and incompetent decision on a TRO at the outset of the case, a decision in which she went outside of the pleadings in the case and decided to act as a prosecutor, a prosecutor, as it turned out, for the extortionate activities of a would-be ethnic mafia—in this case Vietnamese.

Furthermore, the United States Court of Appeals for the District of Columbia Circuit, from which this case arises, has held that the right of access to the courts under the Constitution must be "adequate, effective and meaningful." *Harbury v. Deutch*, 233 F.3d 596, 607 (D.C.Cir.2000) (*Harbury I*). This Court took up the *Harbury I* case in *Christopher v. Harbury*, 536 U.S. 403 (*"Harbury III"*). But this Court did not address the issue of whether or not access to the courts should be adequate, effective and meaningful. In that case it reversed on other grounds without addressing that issue. This is an important case raising that issue emphatically. Nothing could be more a denial of adequacy, effectiveness and meaningfulness of access to a court system than, when people are sued in it and they defend and counter and third-party claim, the court system into which they have been involuntarily drawn simply refuses to take any action to allow them to have their defenses heard,

their counter claims heard, or their third-party claims heard.

It is time, we would suggest, for this Court to address this issue for the first time. Here the abuse of fundamental rights was aggravated when, after years of such inaction the judge whose inept decision in which she stepped outside of her judicial role and acted as a prosecutor—for the would-be oppressors—we were summoned into the chambers of the judge then in charge of the case and the attempt was made to persuade us to just go away rather than insisting that the courts operate for us to have our defenses and claims heard. This treatment that we received is fundamentally at odds with the root cases of this Court on the right of access to the courts such as *Chambers v. Baltimore & Ohio R.R.Co.*, 297 U.S. 142 (1907).

How can we have been given "due process" if we are allowed no process at all? In *Boddie v. Connecticut*, 401 U.S. 371, 375 (1971) this Court said:

> American society ...bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on the common law model. It is to courts ... that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. Within this framework, those who wrote our original

> Constitution, in the Fifth Amendment ... recognized the centrality of the concept of due process in the operation of the system. Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just. It is upon this premise that this Court has through years of adjudication put flesh upon the due process principle. 401 U.S. at 375

The facts here, in direct contradiction to the above passage, move away from the common law model into the direction of "strategically placed individuals," namely, judges. If this case stands without being taken up by this Court it will directly contradict *Boddie* and establish a dangerous precedent in a very important court of appeals and district court that the refusal to grant any process at all to litigants is somehow their due process. This thus needs to be addressed as a matter of first impression lest there be no functioning at all of what is supposed to be our society's primary "social enforcement mechanism."

If more than 23 years of depriving litigants of any process is not a violation of their rights to due process, than how many years does it take? 24, 25, 35, 45, 50? It would seem that a year or two should be the outer limit if the term due process is not to be robbed of its meaning. In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-29, (1982) this Court held that there are "constitutional limitations" upon the refusal of courts to give a litigant meaningful opportunity and that causes of action are a species of property. That causes of action are a species of property was also found in *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The events that have been allowed to stand uncorrected here that occurred in the municipal courts of the District of Columbia, or perhaps, more accurately the failure to allow the required events that due process entails to take place, stand in direct contradiction to both of those decisions by this Court and for that reason this petition should be granted as an important case of first impression to make sure that other municipal court systems understand fully that this kind of deprivation of due process by depriving of any meaningful process will not be allowed to stand within a constitutionally based justice system.

Further, as also pointed out in *Boddie, supra*, the opportunity to which we are entitled as part of due process is an opportunity not only "to be heard" as opposed to not being heard, but it is a right to have a "meaningful opportunity to be heard." 401 U.S. at 377. What went on here is also in conflict

with the decision of this Court in *Armstrong, supra* 380 U.S. at 552 where it was held that the opportunity to be heard must be "at a meaningful time and in a meaningful manner." It does not appear that there is a reported case in which the denial of that requirement has been quite so flagrant in the sense of not kicking the litigants out of court or denying them outright access to the courts but rather of having the litigants to be hauled into court by someone else and then letting them languish there with no chance to have any of their defenses, counter or third-party claims being heard. This is thus an important case of first impression in addition to being one of conflicts with the decisions of this Court.

In that same regard it is an important case of first impression with regard to the question of deprivation of the Seventh Amendment right of trial by jury as at common law. There are many cases in which persons were tried without a jury when they were entitled to one that this Court has decided. There are many cases in which this Court has decided that individuals were deprived of property or liberty without their being granted their right to a trial by jury such as by administrative or executive act but there do not appear to by cases where individuals were taken into a court system and then simply allowed to languish there without any activity on their defenses and claims being allowed. This needs to be addressed.

Even more important we would submit, in order to preserve the appearance of a Rule of Law based upon our Constitution is for this Court in the face of the absolutely refusal of the federal judges below to do anything about this deprivation of due process and fundamental constitutional rights, to make it clear that a refusal to properly analyze and study such behavior within a municipal court system to take up the issue and clarify that federal judges cannot shun taking action to preserve these fundamental rights when they are taken away in this fashion.

To begin with there are the classic decisions of this Court on abstention and comity. It is always a proviso in a case such as *Moses H. Cone Memorial Hospital v. Mercury Const. Corp.*, 460 U.S. 1 (1983) that there should be an analysis of whether there is in fact a meaningful remedy within the state or local judicial system at issue, whether the system allows for the issue that the litigants seek to have the federal courts address to be addressed. Obviously, to completely refuse to allow the litigants here to proceed with their defenses and claims at all for years and years indicates that there is no such opportunity within the District of Columbia municipal court system as operated by the respondents in this case for the issues of fundamental deprivation of our constitutional and federal statutory rights to be addressed. Thus there is a conflict here with the decision in *Moses H. Cone Memorial Hospital.*

In *Moses H. Cone, supra*, also this Court found that courts have "an obligation to decide cases." 460 U.S. at 14. Here we were forced into the defendant District of Columbia courts against our will and against an agreement we had to settle the matter that Thanh Van Vo, the party who sued us in the Superior Court of the District of Columbia in 1986, not to sue over the matters he sued about. Once we filed to defend ourselves and also counter-claimed against Thanh Van Vo and third-party claimed against those who cooperated with him in damaging us, the defendant courts of the District of Columbia and the defendant judges and officials abandoned that obligation completely and now the District Court below and the Court of Appeals, have followed suit. We do not protest any "exercise" of jurisdiction but rather the abandonment of undertaking any such exercise. We do not attack the actions of the defendants below in having "some" jurisdiction but rather their abandonment of their jurisdiction with regard to us altogether. That this obligation to decide cases exists is made clear in the very case that the panel in the Court of Appeals cited, *Wilton v. Seven Falls Co.*, 515 U.S. 277, at 285 (1995) That case is not in conflict with the position that we seek in regard to the principal thrust of our complaint and in fact supports our position as regards our main complaint, which is of, effectively, our being completely denied meaningful and adequate access to the courts of the District of Columbia. It is another

case that shows that the Court of Appeals decisions are in conflict with the decisions of this Court.

Perhaps an even more important reason for this Court to grant our petition is the unresolved question of whether the complete refusal of the respondents to act, once we were embroiled in the District of Columbia court system against our wishes, to resolve our defenses or our claims is an "act or omission" in their judicial capacity. Is a complete refusal to act "within" the "judicial capacity" of a judge or other court official? Or is it the case that such a complete refusal act is, because it is not what a judge is obliged to do according to cases of this court such as we have just cited, the case that it is an abandonment of required judicial capacity and not an act or omission within that capacity at all? If the latter is the case then neither common law judicial immunity or that judicial immunity placed into 42 U.S.C. § 1983 in the 1996 amendments should be a barrier that the respondents here should be allowed to hide behind and our petition should be granted to bring home this important principle in a case of first impression. If the respondents, because of their absolute refusal to act, cannot claim to have acted or omitted to act in their "judicial capacity" that there is an important issue of first impression here as to whether they are immune from monetary damages and having to pay the costs and expenses, including counsel fees and expert fees of suits against them under classic civil rights laws.

Further, since the respondents absolutely for years have refused to let us advance our defenses and claims in the District of Columbia municipal court system and since they clearly intend to continue that posture unless compelled to change it, there is no declaratory relief available to us. That brings us clearly within an exception that is in 42 U.S.C. § 1983 in its present form and the Court of Appeals paid no attention to our rights in that regard under that statute. This Court needs to make clear that this relatively new aspect of the Ku Klux Klan Act cannot be thus ignored but must be looked into. It is another important aspect of first impression in our case.

Further, the one element of declaratory relief, albeit a partial one, was when a judge of the Superior Court twice declared that we should take our federal claims over to the federal courts, splitting them out from our non-federal claims and then, after we had finished in the federal courts, returning to the Superior Court to "try what was left." This was taken official note of in the federal courts by Judge Harry Edwards in the Court of Appeals in his reported opinion at See *Hoai v. Sun Refining and Marketing Company, Inc.*, 866 F.2d 1515, 1519-20 (D.C.Cir.1989). Yet this, our only declaratory relief, albeit partial, was directly violated when, after we had finished in the federal courts, where we won one and lost one, and returned to the Superior Court the judge there, the respondent Dixon, the same one who

bid us "go away," while not taking any action on our claims or defenses, let Sun, represented by a good friend of his, out of the case so that we could not pursue our non-federal claims against Sun and did so before the time for us to respond to that effort had even passed. Moreover, he helped his friend out specifically on the basis that we had not brought our non-federal claims against Sun in the federal court, when one of his fellow Superior Court judges was the one who bid us split our claims between federal and non-federal claims and try the federal claims alone in the federal courts. This was not only a deprivation of the partial declaratory relief that we had been granted, it was a sandbagging in violation of our rights of due process. As such it is important that this specific violation under one of the exceptions to judicial immunity in 42 U.S.C. § 1983 be addressed, which the Court of Appeals refused to do. There is not much law that has been reported under this important exception, certainly not in this Court. It would be important for this Court to take up this case and make clear that this exception in the statute must be observed.

The Court of Appeals here is often considered as unusually important and, therefore, it would seem particularly important that it not be allowed to ignore the law as written and contradict the opinions of this Court as we have pointed out here that it has done. Nowhere in that case is this need more apparent than with regard to the Court of Appeals' erroneous holding in its opinion which it based upon

this Court's 1952 opinion in *Blackmar v. Guerre*, 342 U.S. 512 (1952). In the 1970 amendments to the Ku Klux Klan Act Congress specifically overrode that decision by the clear language it added to the Act. The Court of Appeals here didn't just ignore the error by the District Court on this point, it emphatically repeated it, ignoring the law and our rights to change the name of the defendants at the same time had the courts below even been correct on this point, which they weren't. And, while perhaps not of equal importance in the eyes of this Court, the mistake addressed in Question Presented Number 14 is equally indicative of the inattention and ignoring of our rights by the Court of Appeals and ought to be considered as well.

To paraphrase, "Justice denied is justice completely denied" and this ought to be addressed as an issue of first impression under the circumstances of this case that ought to be addressed by the Highest Court.

Finally, tied in with this denial of access to the courts and, therefore, to justice, is the racially discriminatory nature of the denial of access to the courts here. When Hoai, and the other two of us who were assisting him to recover the possession of his Sunoco gas station franchise, were hauled into court by the ringleader of the would-be Vietnamese mafia that was extorting him of the franchise in violation of the settlement agreement that had been reached, the initial TRO judge abandoned her neutrality and

judicial role and leapt into the role of prosecutor, granting the ringleader, Vo, a TRO based on a charged tort that he had not either pled nor thought of. Then Sun changed sides and went from urging Hoai to regain control of his station to siding with the ethnic mafia and its head thug, treating him as the legitimate franchisee, which we were able to rectify in federal court but with a severe limitation on damages. Yet when we defended and counter and third-party claimed we found that we would not be given any meaningful opportunity to be heard. Is this not to compound injustice with the injustice of a complete denial of justice? Every ethnic group in this country, including the Italians themselves, has been plagued with this Mafia problem. Is not the refusal to allow access to the courts in a meaningful away to those wrongfully sued by such bad actors a racially discriminatory attitude and pattern of behavior? Is it not to say that in the face of such activity, because of this problem as a problem within their ethnic community we will not give them access to our courts to redress their genuine grievances, even while we allow the members of these ethnic bad groups to use our courts to assist them in their wrongdoing? This too is a matter of first impression that needs to be addressed.

Respectfully submitted,

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Supreme Court, U.S.
FILED

(3) Docket No. _____

09-843 OCT 14 2009

In The

OFFICE OF THE CLERK
William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,

Petitioners

v.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, et al.

Respondents.

On Petition for Writ of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 08-7067 **September Term 2008**
1:08-CV-00210

Filed On: May 1, 2009

Thanh Vong Hoai, et al.,
Appellants

v.

Superior Court for the District
of Columbia, et al.
Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Ginsburg, Rogers, and Garland, Circuit Judges.

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and appendices filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Circ. Rules 34(j), it is

ORDERED AND ADJUDGED that the district court's order filed May 13, 2008 denying

reconsideration of its order filed March 28, 2008, be affirmed. The district court properly concluded that appellants cannot state a claim for relief because the judges named as defendants are immune from suit, and the judicial entities, named as defendants are not subject to suit. See Roth v. King, 449 F. 3d 1272, 1286-87 (D.C. Cir. 2006) (judges acting in judicial capacity are immune from suit); Blackman v. Guerre, 342 U.S. 512, 514-15 (1952) (entity established by Congress may not be sued in its own name unless Congress has authorized the entity to be sued either with explicit language or by implication). Nor did the district court abuse its discretion when it denied declaratory relief. See Wilton v. Seven Falls Co., 515 U.S. 277, 287 (1995).

Pursuant to D.C. Circuit Rule 35, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely filed petition for rehearing or petition for hearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

Supreme Court, U.S.
FILED
OCT 14 2009
OFFICE OF THE CLERK
William K. Suter, Clerk

Docket No. 09-843

In The
SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, et al.
Respondents.

On Petition for Writ of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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APPENDIX
VOLUME I

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UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 06-7182 **September Term 2006**
1:08-CV-00210
Filed On: January 11, 2007

Thanh Vong Hoai, et al.,
Appellants

v.

Superior Court for the District
of Columbia, et al.
Appellees.

BEFORE: Henderson, Randolph, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion for a stay pending appeal, the opposition thereto, and the reply; the motion for summary reversal, the opposition thereto, and the reply; and the motion for summary Affirmance and the opposition thereto; it is

ORDERED that the motion for summary Affirmance be granted and the motion for summary reversal be denied. The merits of the parties' position are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir 1987) (per curiam). The Anti-

Injunction Act prohibits a federal court from granting "an injunction to stay proceedings in a State court except [1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." 28 U.S.C. § 2283. This case concerns the third exception, which is known as the 'relitigation" exception. "[A]n essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 148 (1988). Because neither this court nor the district court actually decided the issue which appellants sought to insulate from litigation in the local District of Columbia courts, see Hoai v. Sun Refining and Marketing Co., Inc., 866 F.2d 1515 (D.C. Cir. 1989); Hoai v. Sun refining and Marketing Co., 1990 U.S. Dist. LEXIS 13015 (D.D.C. Oct 1, 1990), appellants' requested injunction is not covered by the relitigation exception to the Anti-Injunction Act.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C.. Cir. Rule 41.

Per Curiam

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

NO. 08-7067 **September Term 2008**
1:08-CV-00210
Filed On: July 16, 2009

Thanh Vong Hoai, et al.,
Appellants

v.

Superior Court for the District
of Columbia, et al.
Appellees.

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges.

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
By: /s/
Michael C. McGrail

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V

CIVIL ACTION NO.
1:06-cv- 00210-RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

ORDER

For the reasons set forth in the Memorandum Opinion entered this date, it is, this 13th day of February, 2007, hereby

ORDERED that [#11] Plaintiff's Motion for a Preliminary and Permanent Injunction is DENIED; and it is further

ORDERED that Count I of the Complaint is DISMISSED.

SO ORDERED.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

v.

CIVIL ACTION
No. 06-cv- 00210
RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

MEMORANDUM OPINION
(February 13, 2007) [#11]

Plaintiffs, Thanh Vong Hoa, John D. Hemenway and David Hemenway, filed the instant action against defendants, the Superior Court of the District of Columbia; the District of Columbia Court of Appeals; the Panel of Judges of the District of Columbia Court of Appeals; Anne B. Wicks, Executive Officer, District of Columbia Courts,; The Boarad of Judges of the District of Columbia; Rufus G. King, III, Chief Judge, Superior Court of the District of Columbia; Eric T. Washington, Chief Judge, District of Columbia Court of Appeals; and Herbert B. Dixon, Jr., Judge, Superior Court of the District of Columbia, seeking inter alia, to enjoin the municipal courts of the District of Columbia – pursuant to the "relitigation exception" to the Anti-

Injunction Act, 28 U.S.C. § 2283 – from permitting the litigation of an issue that plaintiffs contend was already decided in a previous action before Judge Oberdorfer of this Court. (See Am. Compl. At Count I.) Currently before the Court is plaintiffs' Motion for Preliminary and Permanent Injunction. Upon due consideration of the parties' submission, the relevant law, and the entire record herein, plaintiffs' Motion is DENIED.

BACKGROUND[1]

In early 1986, using funds partially furnished by non-party Thanh Van Vo ("Vo"), plaintiff Thanh Vong Hoai ("Hoai") entered into a franchise agreement with non-party Sun Refining and Marketing Company ("Sunoco") for a term ending March 31, 1987. Generally, the agreement leased to Hoai a service station located at 2305 Pennsylvania Avenue, S.E. in Washington D.C. and authorized him to sell Sunoco branded motor fuel. There is pending an unresolved dispute between Hoai and Vo as to which of them was entitled to possession and was in fact in possession from April through August 25,

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1 The "Background" section of this Memorandum Opinion has been adapted directly from our Circuit Court's earlier opinion in *Hoai v. Sun Refining and Marketing Co.*, 866 F.2d 1515 (1989), and Judge Oberdorfer's opinion in *Hoai v. Sun Refining & Marketing Co.*, No. 87-2456-LFO, 1990 U.S. Dist. LEXIS 13015 (D.D.C. Oct. 1, 1990). Internal quotations and citations are omitted.

2986. It is Hoai's claim that he was threatened with murder and then driven out of his gas station by Vo, with the help of other Vietnamese.

After Hoai attempted to recover his station from Vo, Vo filed suit in D.C. Superior Court against Hoai, Sunoco, and others on August 28, 1986. Following a hearing the next day, the court granted a temporary restraining order ("TRO") that reinstated Vo in the gas station, removed Hoai from the station, and directed Sunoco to continue supplying petroleum products to the station.

On September 8, 1986, the Superior Court ratified a consent order between Sunoco and Vo. The order extended the TRO for seven months as to Sunoco and Vo, and required Sunoco to continue to supply petroleum products to the station after the expiration of the TRO, until the dispute between Vo and Hoai was resolved or the franchise terminated. The effect of the consent order was specifically limited to Sunoco and Vo.

Hoai was not informed about the consent order until after it was ratified. He then appealed the order to the D.C. Court of Appeals. The appeal was still pending on April 7, 1987, when Sunoco terminated the franchise. Neither Hoai nor Vo is now in possession of the station. On March 12, 1988, the D.C. Court of Appeals ruled that Hoai's appeal of the consent order was moot, and the court remanded

the case to the Superior Court for a trial on the merits of Vo's claims against Hoai.

Meanwhile, on September 8, 1987, Hoai filed , Sunoco had unlawfully terminated Hoai's franchise in violation of the Federal Petroleum Marketing Practices Act ("PMPA") 15 U.S.C. § 2801, *et seq.*, by entering into the agreement with Vo embodied in the consent order. Sunoco moved to dismiss the complaint on abstention grounds.

On May 26, 1988, Judge Oberdorfer of our Court denied Sunoco's motion, but *sua sponte* stayed the proceedings in order to give deference to the Superior Court. On appeal, our Circuit Court treated the stay as a dismissal, reversed the District Court's decision, and remanded the case for a trial on the merits.

On remand, upon consideration of the parties' cross-motions for summary judgment, the District Court entered judgment in favor of Hoai. The Court held that Sunoco had terminated the franchise agreement without notice on September 8, 1986 (at the latest) in violation of the PMPA.

Over twenty years later, on February 2, 2006, plaintiffs filed the instant action in this Court, and on June 16, 2006, they amended their Complaint to add the claim that serves as the basis of their current Motion for Preliminary and Permanent

Injunction. (See Am. Compl. At Count I.) Simply stated, plaintiffs now seek to enjoin the still-pending action between Hoai, Vo, and others in the D.C. municipal courts (see Vo v. Hoai, No. 7075-86 (D.C. Sup. Ct.)), on the basis that it involves an issue[2] that has been previously ruled upon by Judge Oberdorfer of this Court. For the following reasons, plaintiffs' Motion is DENIED in its entirety, and Court I of the Amended Complaint is DISMISSED.

ANALYSIS

The Anti-Injunction Act, 28 U.S.C. § 2283, generally bars a federal court form granting an injunction "to stay proceedings in a State Court."[3]

In the face of this prohibition, plaintiffs move this Court for just such an injunction.[4] To be clear,

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[2] Although plaintiffs' initial Motion seems to merge together the concepts of claim and issue preclusion (see, e.g., Pls.' Mot. At 1 ("[Plaintiffs] seek to enjoin relitigation in the municipal courts of the District of Columbia of the claim and issue thus precluded.")), their Reply to the Opposition of the Defendants to Plaintiffs' Motion for a Preliminary and Permanent Injunction ("Reply") makes clear that "they do not seek claim preclusion; their motion is for issue preclusion" (Pls.' Reply at 8). Specifically, plaintiffs claim that "the 'issue' of ownership of the franchise was litigated and decided in the PMPA suit by Hoai against Sun in this Court" and therefore should be precluded from relitigation in the D.C. municipal courts. *Id.*

[3] The Court will assume that the District of Columbia is a "State" within the meaning of §2283. See Thomas v. Powell, 247 F.3d, 260, 261 (D.C. Cir. 2001).

[4] Plaintiffs move for both preliminary and permanent relief. Because this Court finds that it is able to make a merits

defendants in this action – and thus the parties that plaintiffs seek to enjoin – are the Superior Court of the District of Columbia, the District of Columbia Court of Appeals, the Panel of Judges of the District of Columbia Court of Appeals, Anne B. Wickes, Executive Officer, District of Columbia Courts; the Board of Judges of the District of Columbia; Rufus G. King, III, Chief Judge, Superior Court of the District of Columbia; and Eric T. Washington, Chief Judge, District of Columbia Court of Appeals; Herbert B. Dixon, Jr., Judge, Superior Court of the District of Columbia. Because the relief requested is so extraordinary, however, plaintiffs bear a heavy burden to warrant its receipt.

Plaintiffs claim that the relief they request is permitted under an exception to the Anti-Injunction Act – commonly referred to as the 'relitigation exception" – which authorizes a federal court to enjoin a state court in order to protect or effectuate its own judgment. See 18 U.S.C. §2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly

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determination on the record before it (as plaintiffs present the Court with a question of law, not fact), and in light of plaintiffs' motion to consolidate the Court's preliminary injunction hearing with a trial on the merits of the permanent injunction request of Count I, pursuant to Federal Rules of Civil Procedure 65(a)(2) (see Pls.' Mot. For Preliminary & Permanent Inj. ("Pls.' Mot.") at 1), the Court will GRANT plaintiffs' motion to consolidate and dispense of any separate analysis for the issuance of preliminary relief.

authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."). In order for plaintiffs to establish that the relitigation exception should apply, however, they must demonstrate that either the doctrine of res judicata or the doctrine of collateral estoppels bars the relitigation of a particular claim or issue already decided in this Court. See *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 148 (1988) (explaining that the relitigation exception only applies when "the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court"). Although plaintiffs' initial Motion seems to merge together the concepts of claim and issues preclusion (see, e.g., Pls.' Mot. At 1) ("[Plaintiffs] seek to enjoin relitigation in the municipal courts of the District of Columbia of the claim and issue thus precluded.")), their Reply to the Opposition of the Defendants to Plaintiffs' Motion for a Preliminary and Permanent Injunction ("Reply") makes clear that "they do not seek claims preclusion; their motion is for issue preclusion " (Pls.' Reply at 8). Specifically, plaintiffs claim that 'the 'issue' of ownership of the franchise was litigated and decided in the PMPA suit by Hoai against Sun in tis Court" and is therefore precluded from relitigation by the doctrine of collateral estoppels. How so?

Pursuant to the doctrine of collateral estoppels, "the judgment in [a] prior suit precludes

relitigation of issues actually litigated and necessary to the outcome of the first action." *Parklane Hosiery Co. v Shore*, 439 U.S. 322, 327 n.5. (1979); *Yamaha Corp. of Am. V. United States*, 961 F.2d 345, 254 (D.C. Cir. 1992); *see also Connors v. Tanoma Mining Co.*, 953 F.2d 682, 684 (D.C. Cir 1992) (placing the burden of showing that the same issue has been actually litigated and necessarily determined in the prior litigation on the party seeking to preclude relitigation). Plaintiffs assert that Judge Oberdorfer's judgment in favor of Hoai on the basis that Sunoco unlawfully terminated its franchise agreement with Hoai "necessary[il]y imply[es]" that the federal court also determined "that the Sun franchise belonged to Hoai and not to Vo." (Pls.' Mot. At 13; see also id. (claiming that "[i]f [the franchise] was transferred to Vo as Vo claims in his Superior Court action, then it could not have been ruled in [the federal district court] that Sun illegally terminated a franchise belonging to Hoai in violation of a franchisor's obligations under PMPA").) In other words, plaintiffs argue that a ruling on the issue of ownership of the franchise was necessary to the outcome of the federal case, and, therefore, the state court action, which also involves the issue of ownership, is barred under the doctrine of collateral estoppels. (*See* Pls.' Mot. at 13.) I disagree.

Judge Oberdorfer could not have been more clear in his opinion that he did not rule upon the issue of actual ownership of the service station. To

the contrary, his judgment was limited to the contractual issue of whether Sunoco breached its franchise agreement with Hoai. Indeed, in his Memorandum Opinion, Judge Oberdorfer explicitly recognized that: "[t]here is pending an unresolved dispute between Hoai and Vo as to which of them was entitled to possession [of the service station] and was in fact in possession from April through August 25, 2986 ... *Whatever may be the ultimate resolution of the dispute between Vo and Hoai,* it is undisputed that Sunoco supplied motor fuel to whomever was occupying the station from April, 1986 until August 25 of that year." *Hoai,* 1990 U.S. Dist LEXIS 13015, at *1-*2 (emphasis added). More importantly, Judge Oberdorfer specifically acknowledged that "even if Sunoco had proper grounds for terminating Hoai's franchise" – such as Hoai's alleged inability to maintain possession of the premises and his absence therefrom, whether through no fault of Sunoco or Hoai himself – Sunoco's "failure to give Hoai timely statutory notice invalidated that termination." *Id.* At *16-*17. Thus, it is abundantly clear that Judge Oberdorfer separated the issue of ownership – between Hoai and Vo—from the purely contractual issue before him – between Hoai and Sunoco – and did not intend for his decision to extend, either explicitly or implicitly as plaintiffs suggest, to the issue of ownership or possession of the franchise.

Moreover, under the plain language of the PMPA itself, Judge Oberdorfer was not required to

consider the issue of ownership when making a determination about the franchise agreement and rights under that agreement. The PMPA's definition of "franchise" is limited to the contract at issue and the definition of "franchisee" is limited to a contracting party.[5] The PMPA simply does not address the "ownership" that plaintiffs wish to establish.

Finally, plaintiffs' argument that our Circuit Court "abolished the argument that the franchise ever belonged to Vo" (Pls.' Mot. at 23), must be similarly rejected. Prior to Judge Oberdorfer deciding the case on remand, our Circuit Court

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[5] The PMPA, 15 U.S.C. § 2801, et seq., provides, in pertinent part:

(1)(A): The term "franchise" means any contract-

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer ...

(B) The term "franchise" includes'

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed ...

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

considered whether Hoai should be allowed to bing his claims in federal court despite concurrent proceedings in Superior Court. Our Circuit Court ultimately determined that the federal action would not 'unduly interfere with the action in Superior Court" because the issues at hand in the federal and state actions were different. Hoai v. Sun Refining & Mktg. Co., 866 F.2d, 1515, 1519 (D.C. Cir. 1989 (noting that "Hoai's sole complaint involves Sunoco's agreement to continue supplying gasoline to Vo rather than to Hoai, not the Superior Court's resolution of the dispute between Vo and Sunoco or between either of those parties and Hoai"). Thus, our Circuit Court additionally concluded and acknowledged that the issues involved in the dispute between Hoai and Vo were separate and distinct from those involved in the PMPA action before Judge Oberdorfer. Accordingly, plaintiffs have not met their burden of showing that the issue they seek to enjoin from litigation in the D.C. municipal courts was actually litigated and necessarily determined by this Court.

CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiffs' Motion for a Preliminary and Permanent Injunction and, accordingly, DISMISSES Count I of the Amended Complaint. An appropriate order will issue with this Memorandum Opinion.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V

CIVIL ACTION
1:06-cv- 00210-RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

FINAL JUDGMENT

For the reasons set for the in the Memorandum Opinion entered this 28th day of March, 2008, it is hereby

ORDERED that Defendants' Motion for to Dismiss (Dkt. #31) is GRANTED; and it is further

ORDERED that defendants' Motion to Strike the Amended Complaint (Dkt #6) is DENIED as moot; and it is further

ORDERED that the complaint is dismissed as to all defendants with prejudice.

SO ORDERED.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V
NO.
RJL

CIVIL ACTION
1:06-cv- 00210-

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

MEMORANDUM OPINION
(March 28, 2008) [#31]

Thanh Vong Hoai, John D. Hemenway and David Hemenway Plaintiffs"), bring this action against, the Superior Court of the District of Columbia ("Superior Court"); the District of Columbia Court of Appeals ("D.C. Court of Appeals"); the Panel of Judges of the District of Columbia Court of Appeals; the Board of Judges of the District of Columbia; the Honorable Eric T. Washington, Chief Judge of the D.C. Court of Appeals; and Herbert B. Dixon, Jr., Judge, of the Superior Court, seeking to compel these courts to reconsider certain decisions adverse to the plaintiffs in a civil action still pending in the Superior Court and a declaratory judgment that the plaintiffs' constitutional rights have been violated by these courts' refusal to do so. (*See generally* Am. Compl.)[6] Before the Court is

[6] All parties agree that the operative complaint is the complaint ("Amended Complaint") filed on June 16, 2006.

defendants' motion to dismiss. After consideration of the parties' pleadings, the relevant law, and the entire record herein, the Court GRANTS defendants' motion.

BACKGROUND

The multi-headed hydra that is this litigation has been the subject of a myriad of earlier decisions b this Court, another District judge and our Court of Appeals.[7] Accordingly, the Court will not recite the considerable procedural history preceding this case. Suffice it to say that there is a pending case in the Superior Court between the plaintiffs, and a third party, Thanh Van Vo ("Vo"), concerning their legal rights vis a vis a Sunoco service station in Washington, DC. The Amended Complaint in this Court, by comparison, alleges certain constitutional violations by the judges of the Superior Court and the D.C. Court of Appeals (collectively "our local courts") by virtue of their prior decisions and their "policies" prohibiting the reconsideration of these earlier decisions in the Superior Court case.

In particular, plaintiffs filed this action pursuant to 42 U.S.C. § 1983 and 1981, seeking to compel our local courts to reconsider a number of

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[7] See Hoai v. Vo, 935 F.2d 3008 (D.C. Cir 1991); Hoai v. Sun Refining & Marketing Co., 866 F.2d 1515 (D.C. Cir. 1989); Hoai v. Superior Court of the District of Columbia, 473 F. Supp 2d 75 (D.D.C. 2007) (Leon, J.); Hoai v. Sun Refining & Marketing Co., No. 88702456, 1990 U.S. Dist. LEXIS 13015 9D.D.C. Oct. 1, 1990) (Oberdorfer, J.); The "Background" section of this Memorandum Opinion has been adapted, in part, from these earlier opinions.

prior adverse rulings against them.[8] (Am. Compl. ¶¶ 1-2, *see also id* . ¶¶16-22 (alleging that D.C. municipal courts have an "official policy," in violation of the Constitution, that "a judge ... cannot possibly have worked a manifest injustice when .. decisions that are clearly wrong become final.").).

DISCUSSION

1. Legal Standard

The Court may dismiss a claim under Federal Rules of Civil Procedure 12(b)(6) only if it appears, assuming the alleged facts to be true and drawing all inferences in plaintiffs' favor, that plaintiffs cannot establish "any set of facts consistent with the allegations in the complaint." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007); *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations ... a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions ....Factual allegations must be enough to raise a right to relief above the

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[8] Plaintiffs sought a temporary restraining order on July 25, 2006, and then a preliminary injunction on August 19, 2006. This Court denied the preliminary injunction on February 13, 2007, and dismissed Count I of the Amended Complaint. The remaining counts are as follows: (1) Declaring Invalid the Law of the Case Rule Whereby Clearly Wrong and Manifestly Unjust Decisions Cannot be Corrected and Resuming the Old Policy (Count II); (2) Declaratory and Injunctive Relief: the TRO that Never Came into Being (Count III); (3) Violation of These Plaintiffs' Rights to Have Their Claims and Those Against Them Tried by a Jury Under the Seventh Amendment as a Violation of 42 U.S.C. § 1983 (Count IV); and (4) Violation of 42 U.S.C. § 1981: Purposeful Racial Discrimination (Count V).

speculative level." *Bell Atl. Corp.*, 127 S. Ct. at 1964-65 (citations and internal quotation marks omitted). *Pro se* complaints, however, are held to 'less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972). A *pro se* pleading is to be liberally construed by the Court. *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citation omitted). Accordingly, *pro se* plaintiffs are not required to use specific legal terms or phrase, and the Court will "grant plaintiffs the benefit of all inferences that can be derived from the facts alleged." *Kowal, 16 F.3d at 1276.*

II. Plaintiffs Cannot State a Claim for Relief

Plaintiffs bring this action alleging a multitude of Section 1983 claims. In essence, they seek to compel our local courts to reconsider their prior rulings adverse to the plaintiffs. Although the Anti-Injunction Act, 18 U.S.C. § 2283 prohibits federal courts from "grant[ing] an injunction to stay proceedings in State court except [*inter alia*] as expressly authorized by Act of Congress," Section 1983 claims can be permissible under limited circumstances, see *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).[9] Defendants move to dismiss on the grounds that the judges (Chief Judge Washington and Judge Dixon) are immune from suit and that the judicial entities (the Superior Court, the D.C. Court

[9] In addition to their Section 19983 claims, plaintiffs also bring a Section 1981 claim. Section 1981 claims, however, do not fall within any exception to the Anti-Injunction Act. See *Valle v. Etermad*, 2005 EL 579813, *1 (E.D. Pa. Mar. 11, 2005). In any event, other than their bald and conclusory statements, no facts can be gleaned from plaintiffs' complaint indicating that our local courts treated them differently on account of Hoai's ethnicity.

of Appeals, the Panel of Judges of the D.C. Court of Appeals, and the Board of Judges of the District of Columbia) are not sueable entities.[10] I agree.

Section 1983 immunizes judicial officers from injunctive relief for actions taken in their judicial capacity "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Since plaintiffs do not contend that our local courts violated any "declaratory decree," they are left to demonstrate that "declaratory relief was unavailable." Unfortunately for the plaintiffs, a failure to get one's desired decisions in our local courts does not constitute such "unavailability" and the suit must therefore be dismissed. See *Roth v. King*, 449 F.3d 1272, 1286-87 (D.C. Cir 2006) (holding Superior Court judges immune from suit for injunctive relief under § 1983 where judges were sued based on their decisions regarding CJA appointments), cert. denied, 127 S. Ct. 1357 (2007); see also *Hawkins v. Supreme Court of New Jersey*, No. 04-1317, 2005 WL 2133588 (D.N.J. Aug 31, 2005) (unreported) (holding state judges immune from § 1983 suit challenging allegedly discriminatory and prejudicial decisions rendered by and policies enforced by state judges), *aff'd*, 174 Fed, Aoox, 683 (3d Cir. 2006) (unpublished).

In addition, the Court declines to exercise its discretion and grant declaratory relief pursuant to 28 U.S.C. § 2201. Simply stated, neither the public

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[10] Plaintiffs clarified that the only money damages they seek are attorneys' fees from the judicial entities. (pls.' Supplemental Opp'n 8.) Since the Court is granting the motion to dismiss these defendants, it need not address this issue.

interest, nor the interests in practical judicial administration, would be served by a federal court reviewing the decisions of our local judicial officers who are acting pursuant to their judicial authority. See Johnson v. McCuskey, 72 Fed. Appx. 475, 477 (7th Cir. 2003) (unpublished) (declining declaratory relief where plaintiffs sought "declaration" that judges acted improperly in making previous decisions); Waris v. Frick, Nol. 06-5189, 2007 WL 954108 (E.D. Pa. Mar. 28, 2007) (permitting declaratory judgment claims to proceed against judges shielded from liability would not serve the public interest.).

Finally, naming the D.C. courts, and their components, as defendants does not save plaintiffs' claims because those entities are non *sui juris*. Although our Circuit Court has not as yet addressed whether the Superior Court can be sued in name, this Court adopts the reasoning of the other courts in this District that have held that the Superior Court, D.C. Court of Appeals, and their components are not proper defendants, and therefore must be dismissed. See Chisholm v. Superior Court of the District of Columbia, No. 06-2174, 2007 WL 1601718, *1 n.1 (D.D.C. June 4, 2007) (unreported) (noting that Congress did not authorize suit against either the Superior Court or the D.C. Court of Appeals). As such, this Court must dismiss all of plaintiffs' claims against the various judicial entities.[11]

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[11] The Court declines plaintiffs' invitation to permit them to amend the complaint and substitute the District as the defendant (Pls.' Opp'n 9), since to do so would be futile. "To impose liability on the District under 42 U.S.C. § 1983, [plaintiff] must show 'not only a violation of his rights under the Constitution or federal law, but also that the [District's] custom or policy caused the violation." See Fierson v. District of Columbia, 506

CONCLUSION

For the foregoing reasons, the Court GRANTS the defendants' motion to dismiss.[12] An Order consistent with this decision accompanies this Memorandum Opinion.

RICHARD J. LEON
United States District Judge

F.3d 36, 38 (D.C. Cir 2004)). Plaintiffs allege that the defendants are violating their rights "through [the] administrative and judicial practices, policies and customs of the courts" by virtue of the apparent refusal of the D.C. courts to reconsider their prior decisions and that these judicial policies are due, in part, to racial and ethnic animus (Am. Compl. ¶¶ 16-22, 163-68). Such bald assertions are insufficient to state a § 1983 claim. Accordingly, amendment would be futile.

[12] Defendants also filed a Motion to Strike the Amended Complaint. [Dkt. #6] Because the Court is dismissing the Amended Complaint in its entirety, it DENIES the motion to strike as moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI, *et al.*
Plaintiffs,

V

CIVIL ACTION .
1:06-cv- 00210-RJL

The SUPERIOR COURT of the
DISTRICT of COLUMBIA, *et al.*,
Defendants.

ORDER

Before the Court is Plaintiffs' Motion to Reconsider. Upon consideration of the pleadings, the relevant law, and the entire record herein, it is this 9th day of May, 2008 hereby

ORDERED that Plaintiff's Motion to Reconsider (Dkt. #43) is DENIED.

SO ORDERED.

RICHARD J. LEON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THANH VONG HOAI
2620 Poag Street,
Alexandria, Virginia 22303

and

CIVIL ACTION
NO. _____

JOHN D. HEMENWAY
4816 Rodman Street, NW
Washington, D.C. 20014

and

JURY TRIAL
DEMANDED

DAVID HEMENWAY
4813 Rodman Street, NW
Washington, D.C. 20014

Plaintiffs,

v.

The SUPERIOR COURT of the
DISTRICT of COLUMBIA
500 Indiana Avenue, NW
Washington, D. C 20001

and

The DISTRICT OF COLUMBIA
COURT OF APPEALS
500 Indiana Avenue, NW
Washington, D. C 20001

and

THE PANEL OF JUDGES
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS in their
official capacity as setters of case
management policy in their decisions
en banc and as three judge panels

and

THE BOARD OF JUDGES OF
THE DISTRICT OF COLUMBIA
500 Indiana Avenue, NW
Washington, D. C. 20001

and

ERIC T. WASHINGTON, Chief Judge,
District of Columbia Court of Appeals,
in his official capacity as
setter of judicial policy and practice
for the District of Columbia
Court of Appeals,

500 Indiana Avenue, NW
Washington, D. C 20001

and

HERBERT B. DIXON, JR.
Judge, Superior Court
of the District of Columbia,
in his official capacity as judge to whom
the case at issue is presently assigned,
500 Indiana Avenue, NW
Washington, D. C 20001

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR MONETARY DAMAGES, COSTS AND FEES
(Filed as a matter of right, no responsive pleading having been filed.)

I.

JURISDICTION

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the First, Fifth and Seventh Amendments to the Constitution of the United States, and also upon 42 U.S.C. § 1981, and the common law and the law of the District of Columbia.

2. This Court has jurisdiction over the causes of action set forth in this complaint under 28 U.S.C. §§ 1331, 1337 and 1343 as well as 42 U.S.C. 1343 and 1341. Appropriate declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction to enforce its own rulings, once made, when municipal courts refuse to apply them and make decisions in defiance of them. That is particularly so when, as here, a plan of litigation has been put in place under which claims will be split and certain claims tried first in this Court and then municipal courts such as the District of Columbia refuse not only to apply the rulings of this Court, but refuse to follow the plan to split the claims which the trial level municipal court imposed upon the case and refused to allow the claims that the litigants could be tried in the municipal court to be tried after the federal claims were split out and tried in the federal court.

3. This Court has venue over the causes of action herein under 28 U.S.C. § 1391.

II.

INTRODUCTION: D. C. COURTS SUED AS MUNICIPAL AGENCIES FOR POLICIES , PRACTICES AND CUSTOMS

4., The gravamen of the case pursuant to 42 U.S.C. § 1983 is the deprivation of the rights of these plaintiffs by the municipal courts of the municipality of the District of Columbia through administrative and judicial practices, policies and customs of the courts of the District of Columbia, which, even when pronounced by judges or judicial panels, are decisions of policy in the administration of cases rather than decisions of straight substantive law.

5. The relief sought is declaratory and injunctive in connection with litigation in the trial level court of the District of Columbia, the Superior Court, and as that litigation has been appealed on interlocutory appeal to the District of Columbia Court of Appeals.

6. Both of the said courts are agencies of the District of Columbia as a municipality for purposes of this action to the extent that it is brought pursuant to 42 U.S.C. § 1983. That is so as set out in decisions of this Court, beginning with such decisions as *O'Callaghan v. District of Columbia*, 241 F. Supp. 273 (D.D.C. 1990), *Best v. District of Columbia*, 743 F. Supp. 44 (D.D.C. 1990), and *Galloway v. The Superior Court of the District of Columbia*, 816 F. Supp. 12 (D.D.C. 1993) and decisions also of the United States Court of Appeals for this circuit such as *Daskalea v. District of Columbia*, 227 F.3d 433 (D.C. Cir. 2000), which decisions followed the decision of the U. S. Supreme Court in *Monell v.New*

York City Dept. of Social Services, 436 U.S. 658 (1978) as that case overturned the decision in *Monroe v. Pape*, 365 U.S. 167 (1961).

III.

THE OUTLINE OF THE OFFENSES CHARGED

7. In 1986, before the law alluded to above had emerged, the present plaintiffs became embroiled in litigation in the Superior Court of the District of Columbia, CA 7075-86, when they were sued in that court and eventually filed counter and third-party claims.

8. Within the past year, despite many efforts over many years by these plaintiffs to advance their defenses, and many efforts by these plaintiffs to have the 1986 suit filed against them dismissed as being without any basis and in violation of a settlement agreement, and, later, efforts by these plaintiffs to have this Court apply to that suit against them so that it must be dismissed, and despite the many efforts of these plaintiffs to advance their counter and third-party claims, a judge of the Superior Court, the defendant the Honorable Herbert B. Dixon, Jr., has threatened to dismiss their case without letting anything be ruled upon or heard, in direct violation of their rights of due process, their right to petition for the redress of their

grievances in the local court, and their right to a trial by jury.

9. This effort of the Superior Court judge to dismiss the claims and defenses of these plaintiffs altogether without allowing the merits of those claims and defenses to be reached is but one of a series of violations of the federal rights of these plaintiffs over a period of some twenty years, and also is part a pattern that has now emerged of racial bias in violation of 42 U.S.C. §1981 inasmuch as it has now become clear that these plaintiffs, an ethnic Vietnamese-American and two non-Vietnamese-Americans who came to his assistance when he was beleaguered, and were sued on false pretenses for doing so, will not be granted the rights to proceed in the courts of the District of Columbia to pursue their claims because, as opposed to granting rights to a non-Vietnamese entity embroiled in the case, whose claims and filings are acted upon with alacrity, these plaintiffs will have their names ignored because they basically involve justification of the rights of one Vietnamese against other Vietnamese.

10. These plaintiffs now sue in this Court to enjoin these violations of their federal rights and enjoin the municipal courts of the District of Columbia to allow their litigation to proceed, granting them due process, their right to proceed to redress their grievances, to have those issues where there is legitimate factual contention to be tried to a

jury and to cease the racial bias against a Vietnamese man and those helping him, namely the three plaintiffs herein, in obtaining the benefits of the justice system of the District of Columbia so that they too may have the benefits of the American system of justice just as litigants do who are neither Vietnamese nor aiding Vietnamese who seek justice.

IV.

A JUDGE OF THE SUPERIOR COURT IMPOSES A "CLAIM SPLITTING" PLAN UPON THE LITIGATION, BUT, AFTER THIS COURT PARTICIPATES IN THE PLAN, AND THESE PLAINTIFFS FOLLOW THE PLAN AS IMPOSED, THE SUPERIOR COURT REFUSES TO FOLLOW THE PLAN, VIOLATING THE RIGHTS OF THESE PLAINTIFFS IN DOING SO: INJUNCTIVE RELIEF SOUGHT

11. These plaintiffs allege, and it is central to their complaint, that the Superior Court, through the Superior Court judge, the Honorable Frederick H. Weisberg, imposed upon the case a plan under which the federal claims presented by these plaintiffs in their counter and third-party claims would be split, and these plaintiffs would try their federal claims in the federal courts, and in this one in particular, and then would return to the Superior Court and try the remainder of their claims there.

12. In accordance with this plan imposed by the Honorable Frederick H. Weisberg of the Superior Court, the litigation in the Superior Court was stayed. The plaintiffs brought two of their claims in this court. Another federal claim had been brought by one of the plaintiffs herein, Thanh Vong Hoai, in the United States District Court for the Eastern District of Virginia, Alexandria Division under RICO.

13. After these present plaintiffs concluded the two actions that were split out from their Superior Court claims, non-RICO claims, and brought in this Court, pursuant to the plan imposed upon the litigation by the Superior Court of the District of Columbia, however, and, upon the motion of these plaintiffs, the stay in the Superior Court was lifted. The Superior Court, in the person of the defendant the Honorable Herbert Dixon, Jr. then refused to apply the rulings of this Court as *res judicatea*. In doing so, the Superior Court of the District of Columbia refused to follow the plan that it had imposed upon the case, and, in direct contravention of the plan that it had induced these plaintiffs and this Court to follow and instead held that these plaintiffs had lost the claims that the plan called for these plaintiffs to return to the Superior Court and pursue by <u>not</u> bringing those claims in this Court. Thus the D.C. courts effectively misled these plaintiffs and, having induced this Court to follow the plan, ignored the findings of this Court.

14. These plaintiffs now seek to enforce the *res judicatae* of this Court's rulings and to have this court compel by injunction the cessation of this refusal by the D.C. municipal courts to impose the *res judicatae* of the rulings in this Court and to impose upon the Superior Court the plan of the subject litigation which the Superior Court itself through one of its own judges, imposed upon the subject litigation and make the Superior Court follow its own plan, this Court having already followed that plan and issued rulings which the Superior Court must now heed.

V.

ONE POLICY VIOLATING THE RIGHTS OF THESE PLAINTIFFS

15. Among the policies of the D. C. courts violating the federal rights of these plaintiffs is a policy that dramatically changed from one not violative of the rights of litigants to one violating the rights of litigants *per se*.

16. In 1910, Mr. Justice Oliver Wendell Holmes, writing for the Supreme Court of the United States, in the case of *King v. West Virginia,* 216 U.S. 92, 100, 101, 30 S. Ct. 225, 54 L. Ed. 396, pointed out that what is known law of the case is a "practice of the courts" and that it is determined in each state by the highest court of that state. In 1912, two years

later, he repeated this finding in *Messinger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152, In both cases he also cited a number of earlier Supreme Court cases for this proposition.

17. This holding, that law of the case is a practice of the courts, not a limit upon their power, and thus a matter of policy to be set by the highest court of a jurisdiction, was specifically recognized in the District of Columbia in cases. See *Morse v. Morse*, 213 A.2d 581, 583 (D.C. 1965), and the old case of *Davis v. Davis*, 96 F.2d 512, 68 U.S.App.D.C. 240, 243 (D.C. Cir. 1938).

18. The court has power, under some circumstances, to disregard a prior decision, although it should not be exercised, except in a clear case (*Williams v. Order of Commercial Travelers*, 6 Cir., 41 F.2d 745), where the earlier adjudication was plainly wrong (*Seagraves v. Wallace*, 5 Cir., 69 F.2d 163, 165; *Rogers v. Chicago, R. I. & P. Ry.*, 8 Cir., 39 F.2d 601, 604), and where the application of the "law of the case" rule would work manifest injustice. *Zurich General Accident & Liability Ins. Co. v. O'Keefe,* 8 Cir. 64 F.2d 768, 770; *Johnson v. Cadillac Motor Car Co.*, 2 Cir., 261 F. 878, 886, 8 A.L.R. 1023. Cf. *United States v. Moser*, 266 U.S. 236, 242, 45 S. Ct. 66, 67, 69 L. Ed. 262. The D. C. municipal courts recognized that the weight of authority, which D. C. followed, was that law of the case did not rule where

decisions are clearly wrong or where they work a manifest injustice.

19. The courts of the District turned 180 degrees away from this policy and that change in judicial policy had a direct and detrimental effect upon these plaintiffs, leading to the violation of their federal rights of due process, their right to petition for the redress of their grievances in the courts, their right to have issues tried to a jury, and, ultimately to the exercise of bias against them because the present plaintiff Hoai was a Vietnamese seeking justice against other Vietnamese, a would-be ethnic mafia, who had badly wronged him and who wronged the other two present plaintiffs because they sought to help him in his travails.

20. This change in judicial policy began with cases by the defendant D. C. Court of Appeals such as *Kritsidimis v. Sheskin*, 411 A. 2d 370 (D.C. 1980) and by the time of the litigation in question had hardened into a different policy. Under this new policy the doctrine of vacating or reversing decisions that worked a manifest injustice was dropped altogether. Further, the concept of vacating or undoing decisions that were clearly wrong was modified into a position that decisions would only be undone if they were clearly wrong in light of newly presented evidence or intervening changes in substantive law.

21. Thus the official policy of the D. C. Courts had become a policy that a judge can do no wrong and cannot possibly have worked a manifest justice.

22. In the present case the very first actions by judges resulting in orders were clearly wrong and worked a manifest injustice.

23. The course of the litigation since has in many ways been a dramatic carrying out of this flawed policy which, by its very absolutist nature, leads to the violation of federal rights, as it did here.

24. This last flawed policy particularly violated the rights of these plaintiffs as it interacted with, in this case, the refusal of the D. C. judges to compel any adherence to the plan of the case whereby the claims of these plaintiffs in the case were split between the D. C. courts and this Court so that the defendants protected themselves against correcting clearly wrong actions by D. C. judges by violating that plan after this Court had issued rulings that made clear how clearly wrong those actions were and thus the D. C. courts chose not to correct manifest injustice that had been worked by those clearly wrong decisions, something the said courts would have been required to do had they applied the rulings in this Court.

VI.

SOME FACTUAL BACKGROUND

25. The present plaintiffs are an American of Vietnamese ethnicity and racial origin and two Caucasian Americans who tried to assist him when his valuable service station franchise in the District of Columbia was taken over by a group of other Vietnamese who told him that they aspired to be like the Mafia and who used mafia-style tactics, as they perceived them, in taking over the service station franchise through threats, deceit and intimidation, including threats of death,

26. This was part of the scheme of this would-be ethnic mafia in which they also lured the Vietnamese present plaintiff Thanh Vong Hoai into sinking his capital into a food stall business and then took over that enterprise with threats of violence, seizing its inventory. The plaintiff Hoai's investment was, for him, considerable capital.

27. While luring the plaintiff Hoai's capital into the food stall business, these same individuals induced him to accept a sham loan for the start up of the service station franchise with Sunoco. The loan never existed, but the false representation that it did enabled one of their ringleaders of the Vietnamese ethnic would-be mafia, one Thanh Van Vo, to work his way into physical control of the Sunoco station and franchise on Pennsylvania Avenue, SE, in the

District of Columbia by a combination of false representations and threats of murder and physical violence, threats that were first hidden from Sun but then became known to its officials.

28. The nature of this mafia style activity as it became evident is what made the flawed early decisions in the Superior Court so manifestly unjust and clearly wrong. Their true nature was alleged from the outset by these plaintiffs in the Superior Court proceedings and yet by their flawed decisions judges of the Superior Court sided repeatedly with this would-be mafia. These decisions were not only flawed, but outside the role of judges altogether in certain respects. Then those decisions were repeatedly protected by further flawed decisions.

29. Thanh Van Vo and the other members of this would-be Vietnamese ethnic mafia that was oppressing the present plaintiff Thanh Vong Hoai ultimately became counter and third-party defendants in the Superior Court of the District of Columbia case in question, when, with Thanh Van Vo as one of the ringleaders, the would-be ethnic mafia pursued this scheme to take over the two businesses from the plaintiff Thanh Vong Hoai through a pattern of events which included threats of violence, even death, and a classic "mafia-style" "one dollar contract" forced upon the plaintiff Hoai by the intimidation and threats against Hoai and his family.

30. By this "one dollar contract," Vo purported to buy the station and franchise, doing so in violation of the local Retail Service Station Act, (RSSA) and the franchise agreement between Hoai and Sun Refining & Marketing (Sun) as entered into under the Federal Petroleum Marketing Practices Act., (PMPA). The actual laws by which Sun, at the time siding with its dealer, refused to accept Vo as a potential transferee of the franchise, were paid no attention to by the aspiring ethnic mafiosi when the would-be ethnic mafia took over the station by their mob tactics. Their ignoring of these controlling laws was later adopted as a policy by the Superior Court of the District of Columbia and its judges.

31. During this time, Sunoco through its representatives, rejected all attempts by Thanh Van Vo to become a transferee of the franchise.

32. The defendant courts and their judges, by the practices, policies and customs complained of in this suit, blessed and sanctioned this ignoring of the laws and also ignored the laws until the present plaintiff Hoai, at the instance of the Superior Court judge, the Honorable Frederick H. Weisberg, came to this Court and successfully pursued a claim here under the federal Petroleum Marketing Practices Act (PMPA) 15 U.S.C. § 1601 *et seq.* But even after the law had been made clear in this Court and the United States Court of Appeals for this circuit, the

defendant courts of the District of Columbia have refused to apply the law and have not changed their course. Now they seek to dump the case in order not to have to apply the law as ruled by this Court and set out in statutes or enabled by statutes and contract law.

VII.

THE PARTIES

33. The plaintiff Thanh Vong Hoai is a resident of Northern Virginia who, at the times pertinent to the litigation at issue in the Superior Court of the District of Columbia and the Court of Appeals of the District of Columbia owned and operated a Sunoco franchise on Pennsylvania Avenue, SE, in the District of Columbia. Simultaneously, he operated, and was fraudulently led to believe that he was purchasing, an ethnic food business in Arlington County, Virginia.. In the case at issue in the D. C. courts, he was sued and then became a counter-plaintiff and third-party plaintiff in addition to being a defendant.

34. The plaintiff John D. Hemenway is a resident of the District of Columbia and member of its bar who attempted to assist the plaintiff Thanh Vong Hoai in protecting his business enterprises: the gas station franchise in the District of Columbia and

the food business located in Arlington, Virginia, when the third party defendants other than Sunoco initially attempted to take them away from the plaintiff Hoai. In the case at issue in the D. C. courts, he was sued and then became a counter-plaintiff and third-party plaintiff as well as a defendant.

35. The plaintiff David Hemenway is a resident of the District of Columbia who attempted to assist the plaintiff Thanh Vong Hoai in protecting his business enterprises: the gas station franchise in the District of Columbia and the food business located in Arlington, Virginia, when the third party defendants other than Sunoco initially attempted to take them away from the plaintiff Hoai. In the case at issue in the D. C. courts, he was sued and then became a counter-plaintiff and third-party plaintiff as well as a defendant.

36. The defendant the Honorable Herbert B. Dixon, Jr., ("Judge Dixon") is a judge of the Superior Court of the District of Columbia, the municipal court in which the case at issue is presently pending and is the judge to whom the case is presently assigned.

1. The defendant Superior Court is the trial level court of the District of Columbia, and as such is the court of a municipality under the decisions of the courts.

38. The defendant District of Columbia Court of Appeals is the appellate court of the District of Columbia as a municipality for purposes of the statutes sued under.

39. The defendant Board of Judges of the District of Columbia consists of the Chief Judge and all the Associate Judges of the District of Columbia Superior Court. They are responsible for policies and practices of the Superior Court and for seeing that they are carried out and observed.

40. The defendant Eric T. Washington is the Chief Judge of the District of Columbia Court of Appeals and, as such, in his official capacity, in which capacity he is sued, can decide upon and influence judicial policy such as that which is involved in litigation plans that allow claim splitting and their enforcement and in case management policy where there is application of law of the case doctrine or discriminatory treatment based on race or national origin or other such discretionary matters of judicial policy as opposed to application of the law as such.

41. The defendant Panel of judges of the District of Columbia Court of Appeals is the body of judges of that Court addressed in their official capacity as they make decisions, particularly those

Supreme Court, U.S.
FILED
OCT 14 2009
OFFICE OF THE CLERK
William K. Suter, Clerk

Docket No. 09-843

In The
SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, et al.
Respondents.

On Petition for Writ of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

APPENDIX
VOLUME II

Thanh Vong Hoai, *pro se*
2820 Poag Street
Alexandria, Virginia 22303
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John D. Hemenway, *pro se*
David Hemenway, *pro se*
4816 Rodman Street, NW
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decisions that are not legal decisions as such but decisions about case treatment and management.

42. For purposes of the Federal Civil Rights Statutes at issue here the defendant courts and court officers are courts and officers of a municipal government, that of the District of Columbia, a body duly constituted pursuant to the Constitution and acts of Congress.

VIII.

HOW THE LITIGATION IN THE D. C. COURTS STARTED

43. After the would-be ethnic mafia took Hoai's station away from him by their mob-style tactics he retained a Vietnamese lawyer who agreed to meet with Hoai and the Sunoco area representative, Ernie Peele, but failed to show up for the meeting. On information and belief the plaintiff Hoai believes that that lawyer was intimidated by the group that had taken over Hoai's businesses.

44. Hoai then retained another Vietnamese lawyer, My-Linh Soland, who purported to be helping him but made matters worse by, among other things, promising to file in court and not doing so, and telling him to stay out of the station for fear of his

safety when Sun was telling him he had to get back into the station in order to retain his franchise.

45. Hoai found out that the lawyer My-Linh Soland in fact had long done work for two of the would-be Vietnamese mafia that were oppressing him, Minh and Luu.

46. While in these straits the plaintiff Hoai happened to meet the plaintiff David Hemenway when when Hoai's car had broken down by the side of the road and David Hemenway stopped to offer assistance..

47. David Hemenway in turn introduced the plaintiff Hoai to his father, the plaintiff John D. Hemenway, a member of the D. C. bar. David Hemenway asked John Hemenway if he could help Hoai in his distress.

48. John D. Hemenway met with the plaintiff Hoai and the Sunoco Area Representative, Ernie Peele, who confirmed that Hoai was Sunoco's dealer and needed to get back into the station to save his franchise and operate it.

49. Ernie Peele signed, as Sunoco Area Representative, a Notice to Surrender the Premises which John D. Hemenway drew up on behalf of the present plaintiff Hoai so that they could go to the station and see if those illegally occupying it would

surrender peacefully without being taken to court. The notice, signed by Peele, asserted that Hoai was the only legitimate franchisee of the station and its rightful occupant.

50. On August 25, 1986, the two Hemenways and Haoi went to the station on Pennsylvania Avenue, SE, in the District of Columbia, and presented the Notice to Surrender and showed those who were there that it was signed by Peele, attested that Hoai was the legitimate franchisee and occupant of the station.

51. Thanh Van Vo was not there A heavyset man who they later learned was a cousin of Vo's, Phuly Vo, was in the station with other Vietnamese and seemed to be in charge. Later they learned that Vo was in Toronto, Canada, at the time.

52. Phuly Vo threatened these plaintiffs that he would call the police. These plaintiffs encouraged him to do so and he did. The police came and witnessed the rest of what happened.

53. The police who came talked to John Hemenway and told him that he would have to go to court to formally evict those who were there.

54. John Hemenway acknowledged that he knew that but he wanted the police to witness what

happened if he just asked those there peacefully to leave, asserting what was in the notice.

55. With the police as witnesses, present plaintiff John D. Hemenway presented his notice, informed all who would listen what was in the notice and asked them to leave.

56. All the Vietnamese who had been hired by Vo left, some requesting and being allowed to take their possessions, including in some cases tools and in one case an automobile.

57. They left without putting up any opposition or argument.after the initial protestation by Phuly Vo. The present plaintiffs cordoned off the station and began to prepare it to reopen under its restored proper franchisee's management.

58. Early the following morning of August 26, 1986, the present plaintiffs Thanh Vong Hoai and David Hemenway were in the station. At that time Thanh Van Vo (Vo), having hurriedly returned from Toronto, Canada, led a gang of eight or more Vietnamese which reentered the premises in a threatening manner, with one gang member brandishing a knife.

59. The present plaintiffs Hoai and David Hemenway were forced, for fear of their lives, into retreating into the station building, locking it, and

then the gang began to break into the building to get at plaintiffs Hoai and David Hemenway. From inside Hoai and David Hemenway could hear members of the assaulting gang trying to break into the building through the roof and through the rear.

60. David Hemenway called the 911 emergency police number, stating to the dispatcher that he and Hoai were under attack, and the police responded.

61. The present plaintiff John D. Hemenway came to the station as did other parties on the side of Vo, including the lawyer for the would-be ethnic mafia, Michael Arif. The confrontation de-escalated from one of physical assault to one of verbal confrontation.

62. In that verbal ensuing confrontation involving additional parties from both sides it was agreed that the parties would meet the following day at the station in the presence of Ernie Peele, the Sun Area Representative, and abide by his decision as to who was the legitimate franchisee and occupant of the Sunoco station on Pennsylvania Avenue, SE in the District of Columbia.

63. The parties met on the following day, August 27, 1986, as agreed. Earnest Peele, the Sunoco Area Representative, informed all who were present that Hoai, a plaintiff here, was Sun's dealer

and the legitimate occupant of the station and owner of the franchise.

64. John D. Hemenway openly tape recorded this encounter as he had portions of the encounter on the preceding day, once it had de-escalated.

65. The would-be Vietnamese mafiosi, with their lawyer present, appeared to abide by the decision made by Ernie Peele and left the station except for their lawyer, Michael Arif, who purported to be taking an inventory of the goods and items purchased by Vo while he was in illegal control of the station for purposes of crediting him with the expenditures on those goods and items.

66. Michael Arif was desultory in taking this inventory and after a while he claimed that some money was missing from a desk, declared that he had to go to a meeting, and left. What happened next made it clear that this inventory was a mere pretext and the missing money charge a fabrication.

67. For, as Michael Arif was purporting to be abiding by the agreement between the parties by taking the inventory, the ringleader Vo then went out and got other lawyers. Within a day, Vo launched a pre-emptive strike lawsuit in the Superior Court against the plaintiffs herein, charging them with a number of fabricated common

law offenses, such as assault, in effect accusing plaintiffs of the sort of behavior that Vo and his gang had engaged in.

68. Vo sued in that case along with a second plaintiff, Suntech, Inc., a company he had formed when he illegally took over physical control of the gas station franchise.

69. The complaint made no mention of, and avoided, the statutes and the law that govern service station franchises and unfulfilled conditions precedent to any transfer such as were clearly set out in the franchise contract between Hoai and Sun as enabled by the PMPA and are contained in the District of Columbia Retail Service Station Act (RSSA).

70. This was so even though that franchise agreement between Sun and Hoai containing the precedent conditions was attached to the Vo/Suntech complaint.

71. This complaint was drafted as if the PMPA, the RSSA, and the franchise agreement and their lawful requirements for the fulfillment of the precedent conditions requiring written notice and an opportunity for the franchisor to vet the proposed transferee did not exist. Nor did the Complaint take cognizance of the RSSA provision forbidding such suits against a franchisor.

72. In essence the complaint asked the defendant Superior Court to enforce that which the law itself forbids. The Complaint was originally filed August 28, 1986.

IX.

THE INVALIDITY OF THE VO COMPLAINT

73. Although the complaint as filed by Vo and his company contained no request for injunctive relief, nonetheless, he and his company filed a motion for a Temporary Restraining Order when they filed their original complaint in the D. C. Superior Court.

74. This suit was against the three present plaintiffs and also against Sunoco.

75. Almost every charge in the original complaint is barred as a matter of law.

76. None of the charges against Sunoco in the complaint can be brought in the face of the RSSA bar against proposed transferees of a franchise who are rejected by the franchisor suing the franchisor.

77. Similarly practically all of the counts against these three plaintiffs are unsustainable. They assume that the franchise belonged to Vo, and

thus incorporate and depend upon charges that are unsustainable because the complaint incorporates the franchise agreement between Hoai and Sunoco, whose precedent conditions, which are specifically allowed by the PMPA were clearly not met in that Sunoco specifically disapproved Vo as a transferee or owner of the franchise. The complaint sought to have the Superior Court compel Sun and the plaintiff Hoai to do that which they correctly and lawfully did not do.

78. Their theories were such things as breach of the one dollar extortionate contract, civil trespass, conversion, lost profits, and tortious interference with a business contract. At that time they sued not only the three plaintiffs in this litigation but also Sun as having allegedly participated in these enumerated torts, all of which assumed Vo owned the franchise, which, as already alleged, was impossible as a matter of law.

79. The charges against John D. Hemenway for theft are based upon the pretextual assertion of the attorney Arif that money was missing made during the pretextual inventory, and are thus based upon the unsupportable notion that an accusation that something is missing in a situation where a person has been one of a number in the premises is a viable charge.

80. The charge of assault against the present plaintiff David Hemenway is ludicrous. It is based upon David Hemenway's having ostensibly brandished an iron bar when he and Hoai, had locked themselves inside the station building, and were greatly outnumbered by a mob, led by Vo. Yet, it was the plaintiff Vo making this ludicrous charge, who was trying to break into the building to do them harm, with one of the assailants flashing a knife. The bar was brandished from within the locked building that was under assault.

81. The complaint does not make any allegation of the tort of wrongful eviction and if it had would have been subject on that count to the same infirmity outlined above as violative of controlling statutory law, the franchise agreement under the PMPA, and of the franchise being Hoai's as later found by this Court as well as other infirmities.

82. Moreover, the complaint was brought in direct violation of the settlement agreement between the parties to abide by the word of Ernie Peele as to who was the legitimate owner of the franchise and occupant of the station.

X.

THE TRO HEARING AND THE INITIAL CLEARLY WRONG DECISION, ONE WHICH WORKED A MANIFEST INJUSTICE

83. The TRO hearing as it first proceeded on the day of the filing of the complaint by Vo and his company, August 28, 1986, was a day in which the hearing was largely taken up by the TRO judge's disqualifying John D. Hemenway as attorney for the parties sued on the basis of the pretextual charges against him in the complaint. Another attorney, D. Curtis Danielson, was finally obtained to represent the defendants but had not been at the hearing very long when the judge, the Honorable Annice M. Wagner, then an associate judge of the Superior Court, stopped the hearing and adjourned matters to the following day.

84. The judge informed the parties that she had to go to a hairdresser's appointment, and that such appointments are difficult to get. The attorney D. Curtis Danielson informed the court that he could not appear the next day because of a schedule conflict.

85. Overnight the defendants obtained new counsel and the following day, when the TRO hearing resumed, as a matter of record, were represented by the present counsel for the three present plaintiffs. Sunoco, subsequently, defected from its dealer Hoai, and made an agreement with the would-be mafia ringleader Vo to give him the franchise, as is set out more particularly below. In the meantime the TRO hearing continued with the

three present plaintiffs and Sun as defendants against whom the TRO was sought.

86. When the TRO hearing resumed at 9:30 AM on August 29, 1986, the judge stepped outside of her judicial role and function and decided to act as a prosecutor and advocate against these plaintiffs and Sun as the then named defendants in the lawsuit in question, introducing into the cause a tort not pled by the plaintiffs and insisting that these defendants and Sun be tried for it.

87. She thus stepped outside her common law immunity and privilege as it protects her personally against violations of 42 U.S.C. § 1983 and acted where she had no jurisdiction at all, as opposed to arguably making a questionable judgment where she did have some basic jurisdiction.

88. It happened like this:

89. The attorneys for Vo and Suntech presenting the case for the TRO had scarcely gotten out a few sentences of their case when the judge, the Honorable Judge Annice M. Wagner, interrupted and made it clear that she did not care about the torts that were pled; she wanted these plaintiffs and Sun, as the defendants at that point, prosecuted for the tort of "wrongful eviction." This was a tort that had not been pled and was thus not in the complaint which the TRO was in support of.

90. Thus the judge stepped outside the role of jurist and took on the role of prosecutor and advocate in complete violation of the rights of these defendants, which she trampled upon egregiously.

91. In doing this the Honorable Judge Annice M. Wagner ignored completely the laws governing gas station franchises in the District of Columbia such as the PMPA (as noted in this Court in the later PMPA case won by Hoai.) and the District of Columbia Retail Service Station Act (RSSA), both of which enable or, in the latter case, statutorily mandate waiting periods before such transfers of service station franchises in order that the franchisor (Sun here) may check the background and experience as well as the credit and financial status of the proposed transferee.

92. Thanh Van Vo had no background and experience as an operator of service stations and did not even know how to check the oil in a car. He had been examined and vetted by Sun and rejected as a potential transferee of the franchise.

93. Thanh Van Vo had no credit and financial strength. In fact he and his colleague Thach were running a scam in which Thach falsely claimed to be president of a bank. They falsely claimed to be lending the plaintiff Hoai $35,000.00 by putting it in an account for the station. In fact they "salted" the

account with a very small amount of money, then forbade the plaintiff Hoai access to it. They then put the proceeds of the station into the account, while writing bad checks on the account, including to the Superior Court for the TRO bond and to Sun for gasoline deliveries.

94. Nonetheless, all of this was ignored by the TRO judge in order that she might act as a prosecutor and advocate, and insert into the case and prosecute her concept of "wrongful eviction" which she knew of from her days in private practice as a "People's Counsel" enforcing tenants' rights.

95. This was not a landlord and tenant situation and hence, even by D.C. law the concept of wrongful eviction did not apply for many other reasons, such as that Vo was an intruding scrambler in Prosser's phrase. He had no occupancy rights; he was trying to get the Superior Court to give him such rights in the face of clear, contractual and legal barriers against them. These defendants had no paramount title over Vo and he a subordinate title. Sun was not his landlord.

96. During the hearing there was testimony from Ernie Peele, Sun Area Representative, about the failure to meet precedent conditions by Vo and the talk by Vo and his would-be Vietnamese mafia colleagues about "breaking legs" of Hoai. The TRO judge ignored these things, refused to consider the

actual facts of the case or the controlling law and found the equities to be for the would-be Vietnamese mafias. In fact she made no effort at all to consider the harm that would come to the plaintiff Hoai from her decision to deprive him of his gas station franchise based on her emotional decision to become a prosecutor in the cause.

97. This was as clear a case of a decision that was clearly wrong and worked a manifest injustice as could be found. A judge of the Superior Court knowingly chose to side with a would-be ethnic mafia against the legitimate owner of a major oil company franchise, against that oil company, and against two individuals who merely sought to assist that Vietnamese franchisee against the would-be ethnic mafia that was oppressing him and one of its ringleaders, Vo.

98. Since the TRO, all the energies of the defendant courts have been devoted to seeing that this clearly wrong and manifestly unjust decision is never examined so that the law may be applied to correct it and to prevent it from in any way being found to have been wrong, even when this Court had made rulings, as it subsequently did, that made it clear that this decision was wrong as a matter of *res judicatae*. Still the judges of the D. C. courts applied their policy that no clearly wrong decision can be corrected, that even when, as here, a decision works

such manifest injustice that it shows a judge giving aid and comfort to a would-be ethnic mafia

XI.

ASSURING NO HEARING

101. Rule 65 of the District of Columbia Rules of Civil Procedure is copied from Rule 65 of the Federal Rules of Civil Procedure and the case law under the Federal Rule applies to its Superior Court counterpart.

102. The language of the TRO issued by the Honorable Annice M. Wagner in the Superior Court in the subject case is in accord with due process in the normal practice under Rule 65 inasmuch as it states that the TRO will expire in ten days.

103. During the TRO hearing the Honorable Annice M. Wagner assured these plaintiffs, and the plaintiff Hoai in particular, that there would be a full preliminary injunction hearing within days.

104. The TRO judge then changed her mind and suddenly decided that there would not be a preliminary injunction hearing, giving as her reason that the plaintiffs in that case, Vo and his company, had requested no injunctive relief in their complaint.

105. Thus, what was a fault by the plaintiffs in that case was used to deprive the present plaintiffs, as defendants in that case, of normal due process in violation of the TRO itself, furthering the manifest injustice of the actions of the judge.

106. The judges of the Superior Court then took further steps under their practices, policies and customs in that court to assure that these plaintiffs would have their rights violated and never reach the merits of their claims and defenses, depriving them of due process, the right to proceed to redress their grievances, to have their issues tried by jury, and ultimately assured that justice would be denied to a mere Vietnamese-American and those seeking to assist him.

107. The defendant courts and those operating them made sure that there would be no hearing and, next, that there would be no security for these plaintiffs and thus that they would be deprived of their property and rights without just compensation.

XII.

A FURTHER PRACTICE DEPRIVING THESE PLAINTIFFS OF THEIR FEDERAL RIGHTS AND A FURTHER REFUSAL TO ADDRESS AND CORRECT

108. In the TRO Order issued by the Honorable Annice M. Wagner at the end of the TRO hearing on August 29, 1986, a bond was set as a precedent condition for the TRO to go into effect as may be seen in the Order.

109. The bond was set at $3,000.00, a completely inadequate amount for a major oil company gas station franchise as a matter of which this Court may take notice. It was to be paid in cash by the terms of the TRO.

110. No cash was ever paid, nor even an attorney's check, as promised at the end of the TRO hearing by counsel for those plaintiffs seeking the TRO.

111. Instead the plaintiff Vo issued a check backed by insufficient funds on the account of the service station franchise that he had set up when he illegally took over the station from the present plaintiff Hoai by mob-style tactics.

112. The bond was to be paid that day. It was not in fact paid for that day or even the following business day. In fact it was not actually paid for weeks.

113. This account upon which this check for the bond was written was the account into which he, the Superior Court plaintiff Vo, had falsely

represented that the had put the capital "loan" to Hoai of anywhere from $35,000.00 to $50,000.00; in fact he had deposited, as the bank records show, only a few hundred dollars.

114. Weeks later, the court notified the plaintiff Vo that his check had been returned for insufficient funds.

115. Subsequent attempts by the present plaintiffs to inform the D. C. municipal judges that the TRO had never come into being because this precedent condition had not been fulfilled, and to have the court declare the TRO to have never come into being for failure to fulfill the precedent condition, were ignored and never acted upon.

116. Ultimately, after the plaintiff Vo simply disappeared for many months, these plaintiffs asked that he be required to show cause why his case against them should not be dismissed or ruled upon as inadequate. During that period, Vo's counsel had been allowed to withdraw because he had not been paid the plaintiff Vo. Vo reappeared up and his counsel was allowed to represent him further, by the court's having the bond paid to Vo's for counsel fees, without any notice to these plaintiffs. These plaintiffs' objections to paying Vo's counsel from the bond, and the reappearance of that counsel, were ignored.

117. Thus, this error and mistake became part of which, though clearly wrong and manifestly unjust, the defendants to this day refuse to correct.

118. The defendant Superior Court, its panel of judges, and the defendant Court of Appeals, with it supervisory responsibilities, have all been extremely negligent in never providing any remedy in Rules or in their practice for allowing those affected as defendants by the failure of plaintiffs who seek TRO's to meet the precedent condition of filing bonds within the time specified with legitimate payment. The result, is to continually deprive defendants of any security as contemplated by the law and the Rules and, ultimately, as here, to deprive or contribute to depriving defendants of property and rights without due process of law.

119. The practice by the offices of the defendant Superior Court of not requiring proper meeting of the precedent condition of timely filing bonds in proper form, as all those who practice in the Superior Court know and have experienced, is common as an examination of the records requiring the posting of the bonds over the years will show.

120. Judges who issue TRO's, when notified of such failure to meet the precedent condition of timely and properly filing bonds, routinely practice a policy of ignoring or excusing such failures.

121. These policies, practices, and customs were particularly harmful in the subject case because of what happened next when, in a further violation of the rights of these plaintiffs, the TRO was made *de facto*, into a permanent injunction without any notice to them, again in gross violation of their federal rights.

XIII.

A FURTHER VIOLATION OF FEDERAL RIGHTS MAKES THE TRO PERMANENT

122. By its terms, and also according to the Civil Rules of the defendant Superior Court, which are copied from the Federal Rules, (including, in that copying, Rule 65,) the TRO was to expire in 10 days.

123. The Honorable Annice M. Wagner, during the TRO hearing, explained from the bench to the present plaintiff Hoai, there a defendant, that he would have a chance to present his case at a preliminary injunction hearing in just a few days.

124. However, the Honorable Annice M. Wagner, decided, as the TRO hearing was ending, (during the TRO hearing these plaintiffs had pointed out that Vo, as the plaintiff in that proceeding, had not requested any injunctive relief,) to not set a preliminary injunction hearing, despite her previous assurances that she would set such a hearing. She

did this despite the mandate of Rule 65, for the irrational reason, as she gave it, that the plaintiffs Vo and his company had not sought any injunctive relief in their complaint.

125. In the meantime, as set out in the preceding subsection, the plaintiffs Vo and his company had not met the precedent condition of posting a bond in cash within the allotted time, or even with a valid and good counsel's check within the allotted time. Instead Vo used a check drawn on the account of the franchise that he had illegally taken over, the same account in which he claimed falsely to have deposited the "loan" that never existed.

126. As previously alleged also, by virtue of the Retail Service Station Act (RSSA) as in effect in the District of Columbia, Vo was specifically forbidden, as a disappointed proposed transferee of the franchise, from suing Sunoco. See RSSA, D.C. Code § 10-226(b).

127. All Sunoco had to do was to move to have itself dismissed, citing the RSSA, and even the Superior Court, having set itself in favor of Vo and the would-be Vietnamese mafia at that point, would have had no choice but to dismiss Sunoco from the case. Further, the Federal PMPA specifically allows a franchisor such as Sun to impose the conditions precedent regarding transfer of one of its franchises in its franchise agreements, as it did in its franchise

agreement with Hoai, conditions precedent that, as here, are in concordance with local law. Sun had an absolute right to impose, as it did, precedent conditions of a time delay in which it had the right to vet any proposed transferee and reject that transferee on rational grounds, as it did with Vo. The Superior Court had no jurisdiction to entertain the suit by Vo against Sun as it did, the case being dismissible on its face.

128. As it turned out, even when it later did get dismissed from the case as a defendant because it switched sides and gave the franchise to Vo, Sunoco, despite being a major oil company, did not cite the RSSA, never mentioned it and instead cited the fact that it had switched sides and joined with what it knew was a would-be Vietnamese mafia as grounds for its dismissal, confirming its knowing collusion with thugs who were terrorizing its own dealer and franchisee.

129. Further, Sun could have, in conjunction with the present plaintiff Hoai, invoked the precedent conditions in its actual franchise agreement with Hoai and simply pointed out that those conditions had not been met, and that it had vetted the plaintiff Vo and found him wanting with complete justification.

130. The Federal Petroleum Marketing Practices Act specifically allows such precedent

conditions in franchise agreements, particularly where, as they do here, they comport with local statutory law governing service station franchises. 15 U.S.C. § 2806(b).

131. Instead of simply moving itself out of the case pursuant to the RSSA or its franchise agreement's terms as allowed and enabled by the PMPA, Sun chose to use and invoke a Rule of the Superior Court and its practices and procedures to switch sides, abandon its dealer, and give the franchise to the intruder Vo, an utterly needless act that was later found by this Court to be an illegal termination of the present plaintiff Hoai's franchise in violation of the PMPA.

132. This action has cost Sunoco needlessly hundreds of thousands of dollars to date, in a judgment against it, a fee judgment against it under the PMPA and payments to its own counsel for years of needless litigation. The bulk of the damages inflicted upon these plaintiffs as a result of this illegal act are still pending and unresolved. If the law is obeyed and the defendants are enjoined to observe the rights of these plaintiffs.

133. In 1986, when Vo and his company Suntech launched their pre-emptive strike law suit in the defendant Superior Court of the District of Columbia in violation of their settlement agreement to abide by the word of Ernie Peele as to who was the

dealer and franchisee owning the Sun franchise on Pennsylvania Avenue, SE, the defendant Superior Court had a Rule called the Judge-in-Chambers Rule, Rule 12-I(b).

134. This Rule as it then stood gave the Judge-in-Chambers, as appointed by the Chief Judge of the Superior Court, unfettered power to decide which parties in a litigation would be required to appear and be notified in a particular litigation to enter an order.

135. While the Rule as then in effect specified a list of particular decisions which the Judge-in-Chambers might make it also contained a broad and boundless provision that the Judge-in-Chambers might consider and decide upon "any and all matters appropriate for such disposition." It did not provide any standard for deciding what might be appropriate for such disposition.

136. In particular the Rule did not provide for notice to all parties and their counsel in such situations as obtained in the subject case and was thus negligent in its construction on its face and an invitation to abuse of such matters as the requirement for due process imposed upon the institutions of the District of Columbia under the Fifth Amendment to the Constitution of the United States.

137. Under this Rule, and the practice and procedure under it in the Superior Court, any two or more parties to multi-party litigation could go to the Judge-in-Chambers without notifying any of the other parties to the controversy and agree among themselves how to dispose of property in controversy.

138. That is what Vo and Sun did in this instance in 1986 as the end of ten days after the TRO had been issued approached, at which point, even had the TRO been legitimate with the bond paid as required, it would have expired by its own terms and the Rule.

139. On its face this Rule and the practice and procedure under it violated the due process rights of these plaintiffs under the Fifth Amendment by allowing the taking of the service station franchise property from Hoai without notice to the parties affected, and with regard to all of these plaintiffs by depriving them *per se* of their rights of due process in the litigation

140. It was completely negligent of the Superior Court to have such a rule and to allow such deprivations under it by the use of its blatant lack of proper requirements and protection for all parties.

141. By 1990 the Superior Court changed the rule to make it apply only to specific items and situations and by eliminating the wide open

language quoted and referred to above, but it was too late for these plaintiffs. The change in the Rule did acknowledge and show that the Rule was defective as alleged.

142. In the subject case, without even notifying the other parties to the litigation, the parties Vo and Sun, enabled by the defective and violative Rule, could and did make a private agreement whereby Sun handed the franchise that was Hoai's over to the intruder Vo

143. Because of this defective and violative Rule a judge of the defendant Superior Court, the Honorable Judge Stephen F. Eilperin, acting as Judge in Chambers, signed the Consent Order drawn up by the parties as if it were his actual judgment and a judgment of the Superior Court.

144. Forever after, that act of signing the Consent Order by the Honorable Stephen F. Eilperin in the municipal courts of the District of Columbia, an act of treating a private agreement between less than all of the parties to the litigation that effectively disposed of the object of the litigation without notice to the other parties or an opportunity for the other parties to participate, despite many efforts by these plaintiffs to have it treated otherwise, that Consent Order has been treated as a judgment and even a *res judicatae* at the instance of Vo and Sun.

145. Yet this was a private act by two or three parties (if you count Vo's company, Suntech) out of six that disposed of the cases of these present plaintiffs as if it were a permanent injunction, not an independent judgment by a judge at all.

146. That this act was not an independent judgment of the defendant Superior Court was recognized by a panel of the United States Court of Appeals of this circuit, in an opinion by Judge, later Chief Judge, Harry Edwards in *Hoai v. Sun Refining & Marketing, Inc.*, 866 F.2d 1515, 275 U.S.App.D.C. 397 (CADC 1989).

147. Thus, the Honorable Stephen F. Eilperin, like the Honorable Annice M. Wagner a few days before, stepped outside the bounds of his judicial discretion, and outside the bounds of his role as a judge, and, using his color and authority as a judge of a municipal court, acquiesced and joined n the collusion between Vo and Sun to give the gas station franchise to Vo and take it away from Hoai and, at the same time, foreclosed any hearing on a possible temporary injunction and made the TRO, which also had been imposed by a judge stepping outside her judicial role, a permanent injunction under the doctrine adopted by the D.C. courts that a judge can do no clear wrong or work any manifest injustice. Judge Eilperin continued the policy begun by Judge Wagner of choosing to join with and assist a would-be ethnic mafia rather than their victim and

those seeking to assist the present plaintiff Hoai as that victim.

148. That this Consent Order was an illegal private act of collusion between Vo, his company Suntech, and Sun was later ruled by this Court in Hoai's successful PMPA case against Sun.

149. After the Court of Appeals opinion cited above, Hoai's PMPA case against Sun went forward in this Court and the present plaintiff Hoai successfully moved for summary judgment against Sun on the precise contention that this Consent Order was an illegal act, a termination of Hoia's franchise by Sun in violation of the PMPA, 15 U.S.C. § 2801 *et seq.* See the October 1, 1990 opinion by the Honorable Louis F. Oberdorfer of this Court which granted summary judgment to the present plaintiff Hoai on the issue of liability in his PMPA suit against Sun after the Court of Appeals opinion cited above reversed the Honorable Judge Louis F. Oberdorfer's initial stay of Hoai's PMPA case, as reported on Lexis-Nexis at 1990 U.S.Dist. Lexis 13015.

150. Since, as this Court has ruled and is now a *res judicatae*, Sun illegally terminated the franchise of Hoai under the PMPA by the private act of the said Consent Order which was given the color and authority of the law of the District of Columbia by the Honorable Stephen F. Eilperin the franchise

at that point clearly did not, by the holdings of this Court and the clear law underlying the holdings of this Court, belong to Vo, it belonged to Hoai.

151. Therefore, since the complaint of Vo and his company, Suntech, in the Superior Court, ignored the controlling law, including that ruled upon in this Court and the United States Court of Appeals for this circuit, and falsely was based almost entirely upon the notion that the franchise belonged to Vo, it should have been dismissed long since and the counter and third-party claims of these plaintiffs in the Superior Court should have been addressed and resolved on their merits.

152. Pursuant to a plan devised by a Superior Court judge to split the claims in the case between the D.C. courts and the federal courts, portions of the claims of the present plaintiffs were tried in this Court and resolved. Yet, after these rulings as set out above were obtained in this Court and the U.S. Court of Appeals for the District of Columbia Circuit, the judges of the municipal D.C. courts have refused to address the merits of the defenses and claims of these plaintiffs in the Superior Court action. They have refused to even examine in light of applicable and controlling authority the contentions of these plaintiffs, or to examine in light of controlling law and the rulings referred to, the baseless complaint of Vo and his company, Suntech.

153. When the complaint of Vo and his company Suntech was removed briefly to this Court and then remanded on other grounds, these plaintiffs filed a Rule 12(b)(6) motion to dismiss the complaint of Vo in light of the controlling authority already cited. That authority was ignored by a Superior Court judge, the Honorable Frederick H. Weisberg, and he thus, without even analyzing the complaint and without even noticing the existence of the controlling law alluded to, rubber stamped the clearly wrong decisions previously set out in the Superior Court and continued the manifest injustice allowed.

154. When the present plaintiff John D. Hemenway nd present counsel for these plaintiffs persisted in attempting to show the baseless nature of Vo's complaint and contentions, including seeking Rule 11 sanctions, the Honorable Frederick H. Weisberg, rather than pay any attention to, much less analyze and apply the controlling law, threatened the present plaintiff John D. Hemenway and the present undersigned counsel with sanctions if they persisted in attempting to show the baseless nature of Vo's claims and to show that the decisions by the Honorable Judge Annice M. Wagner and the Honorable Judge Stephen F. Eilperin, such as they were, were clearly wrong and worked a manifest injustice.

155. Thus the Honorable Judge Frederick H. Weisberg too joined in the effort to assist a would-be Vietnamese ethnic mafia and harm its victim and those who would assist him. It is difficult to conceive more of a manifest injustice than these early decisions that were clearly wrong, as now shown by this Court, and the policy of refusing to correct decisions and actions (even if not properly judicial decisions at all) by judges of the Superior Court that were clearly wrong.

156. After the Honorable Frederick H. Weisberg of the Superior Court imposed a plan upon the litigation whereby the present plaintiffs were to present their federal claims in this Court and then return to the Superior Court of the District of Columbia to finish up their non-federal claims there, and after these plaintiffs had brought and concluded their federal claims in this Court as mandated by the Honorable Judge Frederick H. Weisberg, these plaintiffs returned to the Superior Court to pursue their claims there. At that point, with the above-alleged rulings in place as *res judicatae*, judges of the Superior Court, and the defendant the Honorable Herbert Dixon, Jr. in particular, continued this policy of refusing to correct the clearly wrong early actions and decisions in this case. They refused to apply the rulings of this Court and the United States Court of Appeals as *res judicatae*. The Honorable Judge Herbert B. Dixon, Jr., now seeks to dismiss the defenses, counter and third- party claims of these

present plaintiffs altogether rather than change the policy of not correcting clearly wrong actions and decisions by other judges of the Superior Court early in the case, even a TRO and the Consent Order that had no authority as judicial acts.

XIV.
DEFENDANT D. C. COURT OF APPEALS CONTINUES THE POLICY THAT NO JUDGE OF THE SUPERIOR COURT CAN BE WRONG BY DUCKING

154. The present plaintiffs appealed these clearly wrong early decisions to the defendant District of Columbia Court of Appeals on an interlocutory basis, alleging that these first two and other early decisions in the Superior Court litigation were clearly wrong.

155. The defendant District of Columbia Court of Appeals continued the policy of seeing no wrong and no evil by holding that the clearly wrong early decisions in the case were moot.

156. Rather than analyze and apply the controlling law and so have to find that the decisions and actions of the Honorable Annice M. Wagner and the Honorable Stephen F. Eilperin as alleged above were clearly wrong and worked a manifest injustice inasmuch as they showed the defendant courts assisting a would-be ethnic mafia rather than

applying the law and giving a Vietnamese-American oppressed by such a group the proper benefits of America's legal system, the defendant District of Columbia Court of Appeals ducked by declaring the TRO and the Consent Order moot.

157. These actions and the orders manifesting them were not moot. The clearly wrong TRO had been made into a permanent injunction by the improper and violative decision of the Honorable Stephen F. Eilperin and was still affecting and still does affect, the present plaintiffs. It has been the engine of the suppression of their rights, and that suppression has been protected by the policy complained of.

158. Further, the termination of the franchise of Hoai by Sun when it executed the illegal Consent Order in collusion with Vo, a man its personnel knew was the ringleader of the would-be Vietnamese ethnic mafia, was the very act that this Court found illegal as an improper termination by Sun of Hoai's Sun franchise.

159. In so finding this act illegal this Court ruled that Hoai's damages under the PMPA would be severely limited but that he could, if had brought common law counts relating to the said collusion

between Sun and Vo, have his additional damages heard.

160. In fact Hoai, and the other two present plaintiffs brought such common law counts in the Superior Court litigation when they filed their counter and third-party claims.

161. But, because of the policy complained of in this law suit, those claims have never been allowed to be heard or even treated seriously in the Superior Court, and discovery with regard to them has been blocked and suppressed. Even after this Court ruled, its rulings have not been applied in the Superior Court; instead, every effort has been made to see that the Vietnamese ethnic would-be mafia is not held accountable and Sun's cooperation with that would-be mafia is not held accountable. This is a continuation of the policy complained of in this law suit.

162. The defendant D. C. Court of Appeals has enforced this policy by ducking its responsibility in order to avoid having to point out that the early decisions in the defendant Superior Court were clearly wrong and that the Superior Court continued to avoid correcting them and insisted on siding with the would-be ethnic Vietnamese mafia of which Vo was a ringleader. This avoidance continued as the Honorable Annice M. Wagner, who made the first of the clearl wrong decisions that would have to be

corrected, rose to become Chief Judge of the D. C. Court of Appeals; she retired in June of 2005, at which point the defendant the Honorable Herbert Dixon tried to get rid of the litigation in order to prevent any access to the justice system for these plaintiffs rather than allow a Vietnamese-American and those who came to his assistance to have meaningful access to the justice system

XV.

CONTEMPT FOR THESE PLAINTIFFS AND THEIR CAUSE AND A PLAN IMPOSED ON THE LITIGATION

163. Plaintiffs have previously alleged how the Honorable Frederick H. Weisberg, when the subject litigation was assigned by him, rubber stamped the earlier clearly wrong decisions without ever even bothering to look at the controlling law, though urged to do so many times by these plaintiffs, and also how, when these plaintiffs attacked the baseless nature of Vo's filings, the Honorable Judge Frederick H. Weisberg threatened the present plaintiff John D. Hemenway and the undersigned counsel with sanctions.

164. The Honorable Frederick H. Weisberg also made it clear that he did not want to

acknowledge or hear about the mob style actions of Vo and his cohorts.

165. The Honorable Judge Frederick H. Weisberg made it clear that he wanted the subject litigation to be a dispute between businessmen and that he did not want lies called lies or mob type activity characterized as what it was.

166. The Honorable Judge Frederick H. Weisberg discouraged such accurate descriptions from these plaintiffs and encouraged ridicule of such accusations as engaged in by Vo's counsel and Sun's counsel after Sun switched sides and began to coordinate with the man, Vo, that Sun knew had threatened physical harm to its dealer, the present plaintiff Hoai.

167. The Honorable Judge Frederick H. Weisberg bemoaned the fact that the litigation was contentious and made it clear that he did not think that his court should have to deal with such things as righting the wrongs committed by a would-be ethnic mafia.

168. This was the beginning of the racist attitude, later to unfold more fully, that a mere Vietnamese-American such as the present plaintiff Hoai should not have the right to have the use of the Superior Court to prove and gain compensation for the wrongs that he and the Hemenways alleged had

been committed. Justice was an is denied to a Vietnamese-American set upon as Hoai was.

169. After these plaintiffs initiated their third-party claims against the other members and aiders of the would-be ethnic mafia, and after these plaintiffs brought their federal claims, including Hoai's claim under the PMPA, against Vo and against Sun and other third-party defendants, the Honorable Judge Frederick H. Weisberg then imposed a plan upon the litigation. Under Judge Frederick H. Weisberg's plan, these plaintiffs would try their federal claims then pending in this Court with the Superior Court litigation temporarily suspended while they did that. Judge Frederick H. Weisberg's plan called for the plaintiff then to return to the Superior Court to have the balance of their claims tried there. The claims include the common law claims such as interference with contract, conspiracy and so forth, that they had brought against Vo and Sun as well as others for Sun's having joined with the would-be ethnic mafia to join the oppression of their own dealer at the instance of their local counsel, who had chosen that course rather than simply get Sun dismissed from the case pursuant to the RSSA and the franchise agreement conditions precedent.

170. This plan of splitting the claims between the federal courts and the Superior Court was imposed upon the case by the Honorable Judge

Frederick H. Weisberg following colloquy at hearings on September 16, 1988 and March 14, 1989.

171. In accordance with and in obedience to this plan as imposed by the Honorable Frederick H. Weisberg, these plaintiffs moved for a stay in the Superior Court and that stay was granted. The Superior Court litigation halted pending the resolution of the federal cause of action claims of these plaintiffs in this Court in an Order signed by the defendant, the Honorable Herbert B. Dixon, Jr.

XVI.

THE PROCEEDINGS IN THIS COURT

172. These plaintiffs filed two suits in this Court under the plan imposed upon the litigation by the Honorable Judge Frederick H. Weisberg, suits which duplicated similar counts in their counter and third-party claims in the Superior Court litigation.

173. One suit was dismissed and the other resulted in a summary judgment in favor of the present plaintiff Hoai on liability followed by a jury trial in which a jury awarded him damages, although the damages were limited.

174. The suit that was dismissed was brought by the present plaintiffs pursuant to civil rights statutes including particularly 42 U.S.C. § 1983.

175. At that time it had not yet been established in the case law as it was subsequently. as alleged above, that the District of Columbia and its agencies, including its courts, could be sued as a municipality and municipal agencies under 42 U.S.C. § 1983.

176. Therefore the present plaintiffs at the time sued only Vo, Sun and the private parties under 42 U.S.C. § 1983, and not the present defendants. *Hoai, et al. v. Vo*, Civil Action No. CV 89-2397.

177. As a result, the suit by the present plaintiffs under 42 U.S.C. § 1983 was dismissed on the grounds that there was no governmental involvement alleged, with the finding that what the private defendants were alleged to have done was merely private abuse of process. That dismissal was affirmed on those grounds by the United States Court of Appeals for this circuit.

178. Private abuse of process is addressed in the counter and third-party claims of these plaintiffs in the Superior Court litigation that the defendants have never seriously addressed or allowed to proceed.

179. These abuse of process claims are among those that the defendants have been suppressing and refusing to allow to come to any hearing, full discovery, or even a ruling where the

controlling law is considered and applied in order to deny to these plaintiffs their federal rights as alleged herein and deny to a mere Vietnamese-American the proper benefits of the American legal system because of his race.

180. The present plaintiff Hoai filed another suit in this Court against Sun as the only defendant under the Federal Petroleum Marketing Practices Act (PMPA), a statute which exclusively provides for service station franchisees to sue oil company franchisors. *Hoai v. Sun Refining and Marketing Company, Inc.,* Civil Action No. 87ca02456.

181. In the PMPA suit in this Court, Hoai sought to have the act of entering the private agreement which the Honorable Judge Stephen F. Eilperin signed as a Consent Order declared an illegal termination under the provisions of the PMPA. Hoai succeeded in this effort.

182. By ruling of this Court the private act by which Sun switched sides in the Superior Court litigation and colluded with Vo to take over and operate his franchise, was declared an illegal termination of Hoai's franchise by Sun under the PMPA, meaning, obviously, that the franchise and station never belonged to Vo.

183. Hoai sought in this Court all damages that the PMPA allowed and then this Court

determined what damages were allowed to Hoai under the PMPA.

184. Hoai brought his PMPA action against Sun in this Court in reliance upon the plan imposed upon the litigation by the Honorable Judge H. Weisberg of the Superior Court.

185. According to the Honorable Judge Frederick H. Weisberg's plan, any claims or damages not encompassed in the federal claim pursuant to the PMPA would remain pending in the Superior Court, to be pursued once matters were wound up in this Court and the stay in the Superior Court was then lifted.

186. So that according to the Honorable Judge Frederick H. Weisberg's plan, whatever claims and damages not allowed under the PMPA that Hoai might not recover because of this Court's determination of what damages were allowed under the PMPA would remain to be claimed in the Superior Court under the non-federal claims, particularly tort claims, that Hoai and the other two present plaintiffs had filed in that Court would remain stayed and pending, awaiting the outcome of the determination about the nature and extent of damages under the PMPA in this Court.

187. Although he was informed of the plan of the Superior Court Judge Frederick H. Weisberg,

that these plaintiffs proceed with their federal claims in the federal court and then go back to the Superior Court to finish up their common law claims there, the judge of this Court to whom the case was assigned, the Honorable Louis F. Oberdorfer, sought to avoid taking action and insisted that the claims of Hoai in the Superior Court should go ahead while he stayed action in this Court.

188. The plaintiff Hoai reversed that decision in an interlocutory appeal taken under the collateral order doctrine as already set out. *Hoai v. Sun Refining & Marketing, Inc.*, 866 F.2d 1515, 275 U.S.App.D.C. 397 (CADC 1989).

189. The decision of the Court of Appeals of this circuit found that the Superior Court wanted the federal causes of action to proceed in this Court and found that the consent order of the Superior Court that had effectively turned the original TRO (of which more below) into a permanent injunction without any notice to these plaintiffs as defendants, counter and third-party plaintiffs in that court represented no independent judgment of the Superior Court.

190. On the basis of that decision of the United States Court of Appeals for this circuit, the plaintiff Hoai then obtained summary judgment against Sun on the issue of liability for the illegal

termination of the franchise in violation of the terms of the PMPA.

191. In granting partial summary judgment to the present plaintiff Hoai as the plaintiff in that PMPA case, the judge of this Court held that a Consent Order entered into under the Judge-in-Chambers procedure then in effect in the Superior Court of the District of Columbia between Vo and Sun only, without any notice to Hoai (or for that matter the Hemenways) illegally terminated Hoai's franchise with Sun under the PMPA.

192. This is the same consent order between the two parties Vo and Sun that the United States Court of Appeals for this circuit had already held constituted no independent judgment of the Superior Court. See the October 1, 1990 opinion by Judge Louis F. Oberdorfer, of this Court granting summary judgment to present plaintiff Hoai in his PMPA case against Sun after Hoai reversed the stay of his PMPA action in the U. S. Court of Appeals opinion alleged above. That opinion of this Court is reported on Lexis-Nexis as 1990 U. S. Dist. Lexis 13015.

193. Hoai, as the PMPA plaintiff in this Court, and Sun, as the PMPA defendant, then filed motions and briefs concerning the damages that would be allowed to be tried in this Court before the jury.

194. The Honorable Louis F. Oberdorfer of this Court considered the nature of the damages to be allowed to Hoai against Sun under the PMPA and rendered an opinion in a Memorandum of May 2, 1991, that confined the damages under the PMPA to contract damages, ruling that tort damages would have to be sought separately in separate claims.

195. The Honorable Louis F. Oberdorfer specifically ruled that such tort claims as "abuse of process, wrongful eviction, intentional infliction of emotional distress, conspiracy to interfere with contract, waiver, estoppel,..." and others were not encompassed under the PMPA and could and should be brought separately.

196. Judge Oberdorfer specifically ruled that the PMPA does not prevent franchisees from suing under state law.

197. Hoai and the other two present plaintiffs had sued under D. C. law as coming under Judge Oberdorfer's ruling in their counter and third-party claims in the subject Superior Court litigation for these and other torts.

198. Those claims were pending in the Superior Court when Judge Oberdorfer made the rulings referred to and, under the plain imposed upon the litigation by the Honorable Judge Frederick H. Weisberg, remained stayed there pending the

outcome of the federal litigation, to be taken up and prosecuted when the stay in the Superior Court was lifted.

199. Further, the Honorable Louis F. Oberdorfer, in ruling upon damages to be allowed under the PMPA in the suit brought in this Court by Hoai against Sun under that Act, limited the contract damages that were to go to the jury to a very short term, saying that Sun sent letters of termination of the franchise to Hoai, and gave as a reason for termination, Hoai's problems with Vo that caused Hoai to be absent from the station and unable to run it. This was dicta as Judge Oberdorfer had already held that the Consent Order between Sun and Vo illegally terminated Hoai's franchise and there cannot be two terminations of the franchise.

200. It did cause a problem because it intimated that if Sun colluded with Vo so as to join with Vo and harm Hoai, which is what the Consent Order that was an illegal termination was, Sun would not be responsible. This was also dicta because Judge Oberdorfer specifically ruled that if Hoai wanted damages over and above those allowed by the PMPA he would have to bring separate common law counts, which he had done in the Superior Court and were pending there.

201. The tort claims brought in the Superior Court by Hoai and the other two present plaintiffs

had been stayed and were and are now still standing, encompassing collusive harmful acts in which Vo and others and Sun participated jointly. These plaintiffs are entitled to have Sun held to account for such collusive acts under the plan imposed upon the Superior Court litigation by the Honorable Judge Frederick H. Weisberg. This is particularly true of interference tort claims and conspiracy to interfere type claims.

202. A trial was then held in this Court on the amount of the damages resulting from the illegal termination of Hoai's franchise by Sun as so limited by Judge Oberdorfer and a verdict was returned against Sun. After extensive resistance which was found to have no merit, some five or six years later, Sun paid those damages and an award of counsel fees and expenses under the fee-shifting provisions of the PMPA.

203. After the actions in this Court were over and all appeals exhausted, these present plaintiffs moved to lift the stay in the Superior Court and it was lifted.

XVII.

BACK IN THE SUPERIOR COURT: THE STAY IS LIFTED, THE PLAN IS IMMEDIATELY VIOLATED

203. On December 31, 1997, with all matters in this Court and the U.S. Court of Appeals concluded, these plaintiffs filed a motion in the D.C. Superior Court to lift the stay that had been granted there while the then federal claims of these plaintiffs were tried in this Court, as mandated by the Honorable Judge Frederick H. Weisberg of the Superior Court.

204. The motion to lift the stay in the Superior Court was not opposed and it was granted in an order signed on March 4, 1998 that was docketed on March 12, 1998.

205. At that time there were outstanding in the Superior Court from before the stay a substantial number of motions by these plaintiffs that had not been ruled upon, although fully briefed.

206. Ruling upon these motions would have substantially advanced the litigation.

207. For example, a comprehensive motion to enjoin Vo from proceeding with his suit against these plaintiffs based upon his agreement to abide by the word of Ernie Peele as to who was the dealer and franchisee had been outstanding for years.

208. A motion to compel Vo to give information and allow himself to be fully deposed in accordance with an order he had ignored was outstanding and had been for years.

209. When the stay was lifted these plaintiffs immediately began preparing a comprehensive motion to dismiss Vo's complaint by applying the rulings of this Court such as that the franchise belonged to Hoai and not Vo when it was illegally terminated since this Court, following the U. S. Court of Appeals found that Sun illegally terminated the franchise of Hoai not of Vo and found that Hoai was having difficulty getting Vo out of Hoai's station in which Hoai had to be in as the Sunoco franchise's owner, as one of the factors this Court considered in deciding on damage limitations.

210. A short time later these plaintiffs filed this comprehensive motion to dismiss Vo's Superior Court claim and for other findings based on the rulings in this Court, applied as *res judicatae*.

211. This motion thoroughly presented the case that because this Court had ruled that Sun illegally terminated under the PMPA a franchise and station lease as part of that franchise that belonged to Hoai, it cannot have belonged to Vo and that, further, since this Court had ruled that tort damages could not be obtained by Hoai under the PMPA the tort claims of Hoai and the other two present

plaintiffs left pending in the Superior Court under Judge Weisberg's plan to split the litigation could thus be pursued to their conclusion in the Superior Court with the stay lifted, including those torts, such as interference claims, that involved collusion between Vo and Sun as well as others. This was a request to the Honorable Herbert B. Dixon, Jr., to apply the rulings of this Court, which were *res judicatae* creating issue preclusions.

212. If this motion were ruled upon and the rulings in this Court applied under the plan of the case imposed upon the litigation by the Honorable Judge Frederick H. Weisberg in the Superior Court were applied, the TRO of Judge Annice M. Wagner, the Consent Order signed by Judge Stephen F. Eilperin that made the TRO a permanent injunction and the early opinion of the Honorable Judge Frederick H. Weisberg rubber stamping the TRO of Judge Annice M. Wagner in violation of controlling law would all have to be held to be clearly wrong, the collusion of Sun with Vo under the tort claims of these plaintiffs would have to be addressed, and a manifest injustice would have to be found to have resulted in the form of the racist treatment by which Hoai's complaints against the would-be ethnic mafia that the defendant courts mocked and refused to take seriously would have to be addressed; the American justice system would have to be made available to Hoai and to the Hemenways who assisted him.

213. To this day the defendant Superior Court and the defendant the Honorable Herbert B. Dixon, Jr., have refused to rule upon this motion along with many other motions of these plaintiffs from both before and after the litigation in this Court, all of which motions, if ruled upon, would require the dismissal of the Vo complaint and the prosecution of the claims of these plaintiffs including those claims which include Sun as a third party defendant.

214. Such resolving of outstanding motions in the Superior Court, were the rulings made in this Court and the United States Court of Appeals for this Circuit to be applied, would require a reexamination of the earlier actions and decisions and rulings in the case from the Honorable Annice M. Wagner, the Honorable Stephen F. Eilperin and the Honorable Frederick H. Weisberg and recognitions that their actions, decisions (such as to sign a private agreement between less than all the parties as a Consent Order of the court) and rulings, were clearly wrong and that in this instance the same had worked manifest injustice.

215. Sun had been sued by these plaintiffs in a number of tort counts for its collusion with Vo and his cohorts in giving him the station; these were the tort counts that this Court had ruled could not be

sued for as part of PMPA claim but must be sued for separately.

216. Under the plan of litigation imposed upon the litigation of these plaintiffs it by the Honorable Frederick H. Weisberg of the Superior Court, if the plan had been followed and the *res judicata* of this Court applied, these plaintiffs should have been allowed, once the stay was lifted in the Superior Court, to proceed with their tort claims against Sun as a participant with Vo and others in a number of torts.

217. That did not happen.

218. Before these plaintiffs could complete and file their comprehensive motion, which was quite detailed and had numerous exhibits, Sun filed a quick motion in the Superior Court case for a summary judgment to dismiss itself from the Superior Court case as a third-party defendant.

219. In this motion Sun invited the defendant the Honorable Herbert B. Dixon, Jr. to ignore the plan of the litigation imposed upon it by the Honorable Judge Frederick H. Weisberg of the Superior Court and instead dismiss Sun from the case on summary judgment by applying a false *res judicata*.

220. Sun's hasty motion was based entirely on the concept that since Hoai had brought his PMPA action against Sun in this Court he should have brought all of his tort claims there as well and so should the other two present plaintiffs have done, even though they had no jurisdiction to proceed under the PMPA. Thus Sun was knowingly ignoring the plan imposed upon the litigation by the Honorable Frederick H. Weisberg of the Superior Court and inviting the Superior Court to violate its own plan, to apply the rule that applies when a judge has not split the claims in order to deprive these plaintiffs of their claims pending in the Superior Court.

221. For Sun made no mention in its motion of the Honorable Judge Frederick H. Weisberg's plan of the case that the Honorable Judge Frederick H. Weisberg had imposed upon the case.

222. The defendant the Honorable Herbert B. Dixon, Jr., granted Sun's motion with alacrity.

223. In fact the defendant the Honorable Herbert B. Dixon, Jr., was so anxious to let Sun out of the case that he granted Sun's motion to dismiss itself from the case on summary judgment initially before the time in which these plaintiffs were allowed under Superior Court rules to file their oppositions had even run

224. In dismissing Sun from the litigation so hastily on its quick motion, the defendant the Honorable Herbert B. Dixon, Jr., sent his clerks to research and find authority that would allow him to adopt Sun's position set out in its motion. The defendant the Honorable Herbert B. Dixon, Jr., gave no consideration whatsoever to researching the plan of the case or the position of these plaintiffs as having accepted that plan and obtained the *res judicaatae* that they set out in their motions and filings, including their comprehensive motion detailing how the rulings of this Court should be applied to the Superior Court litigation. When these plaintiffs sought to draw the Honorable Herbert B. Dixon's attention to the authority of the Restatement of Judgments 2d as to a judge's imposition of a plan to split claims as an exception to the rule that claims should not be split, the Honorable Herbert B. Dixon paid no attention to it.

225. The defendant the Honorable Judge Herbert B. Dixon, Jr., never even read that material and never considered the rulings of this Court invoked by these plaintiffs and, therefore, never applied the rulings of this Court from the PMPA case of the present plaintiff Hoai to the proceedings in the Superior Court as *res judicatae*..

226. The defendant the Honorable Herbert B. Dixon, Jr. refused repeatedly to consider and analyze his decision to let Sun out of the case, though

it was clearly wrong and worked a manifest injustice, and did so though to do so was in defiance of the Rulings of this Court.

227. The present plaintiffs made a number of additional filings and motions at that time over a period of months.

228. The defendant the Honorable Judge Herbert B. Dixon, Jr., ignored them all and has continued to do so up until the present time.

229. The present plaintiffs filed an interlocutory appeal of the decision to let Sun out of the case in defiance of the rulings of this Court and the plan of the litigation imposed by the Honorable Frederick H. Weisberg.

230. Sun moved to dismiss the interlocutory appeal.

231. Without giving any reasons, without considering the rulings of this Court, and without considering whether the decision by the defendant the Honorable Herbert B. Dixon, Jr., was clearly wrong or worked a manifest injustice, the defendant D. C. Court of Appeals hurriedly dismissed the appeal.

232. The defendant the Honorable Herbert B. Dixon, Jr., then simply did nothing in the case for

years, refusing to rule upon any motions of these plaintiffs or to consider or study any of their filings, and waited until the judge who had made the original decision to abandon her judicial rule and act as a prosecutor for the would-be ethnic Vietnamese mafia, as led by Vo, against Hoai and the other two present plaintiffs who sought to assist him in order to oppress and beleaguer Hoai, retired in June of 2005. In the meantime the Honorable Annice M. Wagner had risen to great power within the defendant municipal courts, having been moved from civil trial work to head of the probate division and then moved upstairs to the defendant D. C. Court of Appeals and then to Chief Judge of the Court of Appeals.

233. Upon the retirement of the Honorable Annice M. Wagner, in June of 2005, the defendant the Honorable Herbert B. Dixon, Jr., immediately contacted the parties, including Sun, and held a status conference at which he attempted to get the parties, led by Sun and the attorney for Vo, (Vo, in the meantime having disappeared altogether for the second time in the litigation) to simply dismiss everything so that the litigation would conveniently "go away."

234. The present plaintiffs refused to "go away," believing that they were entitled to have their numerous outstanding motions finally ruled upon, to due process under the Fifth Amendment, to have

their defenses and claims ruled upon and heard upon their merits, finally, as part of their right to Petition for the Redress of their Grievances, to have their defenses and claims, to the extent so triable, tried by a jury, and to have a Vietnamese-American, and those who went to his aid under dire circumstances, benefit from the processes of the municipal court system of the District of Columbia just like any other citizen.

235. The defendant the Honorable Herbert B. Dixon, Jr., indicated that he would prefer to see the litigation dismissed and issued a show of cause as to why it should not be dismissed.

236. These plaintiffs responded to the show of cause and over a period of time have demonstrated to the defendant the Honorable Herbert B. Dixon, Jr., with additional filings in their motions and briefs all that is alleged in the present complaint.

237. Yet the defendant the Honorable Herbert B. Dixon, Jr., did, and has to this day done, nothing to correct the clearly wrong decisions in the Superior Court litigation, making it clear that the change of policy complained of herein is in force and that the rulings of this Court will not be applied if to do so would threaten that policy and force the defendants to reexamine and correct a clearly wrong action by a judge of the Superior Court.

238. Upon examining the files of the Superior Court litigation in chambers at the invitation of the Honorable Herbert B. Dixon, Jr., these present plaintiffs found that many of their motions, particularly the dispositive ones, were not in the court file in any coherent and readable form. These defendants have supplied the Honorable Herbert B. Dixon, Jr., with coherent and readable duplicates of their dispositive motions and other filings, and still nothing has been done and no action taken to correct the clearly wrong actions of the Honorable Annice M. Wagner, the Honorable Stephen F. Eilperin, the Honorable Frederick H. Weisberg and others, including the defendant the Honorable Herbert B. Dixon, Jr., himself.

239. Nothing has been done to enforce the Rulings of this Court that were made in Hoai's PMPA action against Sun. In the meantime the plaintiff Vo in the Superior Court, has, for the second time, disappeared. His attorney, who formerly moved successfully to be let out of his representation of Vo the first time that Vo disappeared, (and was allowed to re-enter his appearance over the objection of these present plaintiffs and get paid with the bond that was supposed to secure these plaintiffs) admits now that he has not been able to communicate with his client Vo and has not seen him for years, yet he is allowed to "represent" Vo and a motion to stop this violation of law and the ethics has been ignored.

240. The clear pattern has emerged unequivocally that a large oil company, perceived of as part of the establishment, and non-Vietnamese, will be protected at all costs, even if it cooperates with a gang of criminals. But as to the present plaintiff Hoai and the other two present plaintiffs who came to his aid, the message is clear as regards the American justice system as embodied in the defendant courts: No Vietnamese-Americans need apply.

241. There was clear indication in the files that these plaintiffs were invited to examine in chambers that when the litigation was reopened in the Superior Court, clerks were instructed to find a way to let Sun out of the litigation in violation of the plan of the case imposed upon it by the Honorable Frederick H. Weisberg and in violation of the rulings of this Court considered as *res judicatae*.

242. There was no indication whatsoever that the many motions and filings of these plaintiffs had ever been examined or considered or that any consideration had been given to the plan of the litigation imposed upon it by the Honorable Frederick H. Weisberg or to the rulings of this Court in the PMPA case and of the United States Court of Appeals in accord with that plan.

243. To this date the defendant municipal courts of the District of Columbia have refused to

allow these plaintiffs to reach the merits of their defenses to the claims of Vo and his company Suntech as violative of the law.

244. Instead of allowing these plaintiffs, as it had promised, to pursue their claims in the Superior Court once matters were wound up in the federal courts, the Superior Court has not only blocked, ignored and "sat upon" their claims in every way. The Superior Court has used the excuse of these plaintiffs, having tried their claims separately in the federal courts as they were induced by the Superior Court to do, to try and get the oil company, Sunoco, out of the case and permanently prevent any resolution between the plaintiff Hoai and his Vietnamese adversary in the Superior Court proceeding of the matters in controversy between them as pled in the litigation in that court, thus ignoring its own plan of the litigation as by that time participated in by this Court, to continue to deprive these plaintiffs of their federal rights in violation of 42 U.S.C. § 1983.

245. It has now become evident why these events have transpired as they have, and the real reasons why the D. C. courts and their judges and administrators have wanted this case to "go away" as it involves any resolution of the allegations of plaintiff Hoai and the two non-Vietnamese who sought to assist him about his being set upon by a would-be Vietnamese mafia, and why the D.C. courts

have sought to prevent these plaintiffs from ever having the truth of their allegations of this Vietnamese would-be mafia activity, including threats of violence and even death, reached. That reason is a racial bias against letting a wronged Vietnamese, and those who assisted him, have his day in court against a would-be Vietnamese ethnic mafia that had greatly oppressed and wronged him and with whom both Sun and a prominent judge of the Superior Court (and, later, of the D. C. Court of Appeals) had sided, the latter in the role of a prosecutor and advocate, stepping outside the judicial role and, thus, her jurisdiction, altogether. It is a custom and practice of denying to a member of a particular ethnic and racial group, and those seeking assisting him, the benefits of the American system of justice. Thus a violation also of 42 U.S.C. § 1981 has been perpetrated by these municipal courts.

246. That this was the aim of the Superior Court judges was made evident in June, 2005, when the Superior Court judge then in charge of the case, after ignoring and refusing to consider and rule upon every motion of these plaintiffs to advance their cause literally for years, used the occasion of the retirement of the judge, who made the initial clearly wrong and manifestly unjust decision, to seek to dismiss the case of these plaintiffs for failure to prosecute. Thus, after these plaintiffs tried to prosecute their case over and over again with motion after motion over years, all of which the Superior

Court judges refused to rule or act upon, including particularly the defendant the Honorable Judge Herbert B. Dixon, Jr., the Superior Court through its judge then sought to destroy the rights of these plaintiffs to have their grievances redressed and their claims tried by a jury.

***

COUNT SEVEN: VIOLATION OF 42 U.S.C. § 1981: PURPOSEFUL RACIAL DISCRIMINATION

291. Plaintiffs repeat and incorporate herein by reference the allegations of 1 through 290 above.

292. The actions of the defendant Dixon and other judges of the Superior Court in effectively refusing to advance the plaintiffs' case by refusing to decide upon any motion they filed, including dispositive motions and motion to compel the discovery denied them so as to prevent them from developing and pursuing their defenses and claims, while rushing to let Sun out of the case upon the lifting of the stay in the Superior Court after the split out claims were tried in the federal courts with varying success, were done as a purposeful racial discrimination to deny to the plaintiff Hoai and the Hemenways assisting him the benefits of the American system of justice because they were perceived of as a mere Vietnamese and two non-

Vietnamese who had decided to help him when he was set upon by a would-be Vietnamese mafia.

293. Even threats of violence to Hoai were derided and not taken seriously by the Superior Court judges, starting with Judge Wagner at the TRO hearing. After all, these were only disputes among a lesser people, as the attitude has now been revealed, not worthy of finding that decisions that were just plain wrong or manifestly unjust correctable where they might expose an American company, part of the establishment, such as Sun, to liability for its actions in colluding with the would-be Vietnamese mafia against their own contract and their own dealer.

294. The leaping upon the claimed *res judicata* advanced by Sun in violation of the plan of the case under which claims were to be split between the Supererior Court and this Court while ignoring the *res judicatae* advanced by these plaintiffs under the plan as imposed by the defendant Superior Court, the racial bias was made glaringly evident.

WHEREFORE, these plaintiffs pray in this Count Seven that this Court:

G. Declare that a Vietnamese-American claiming to be set upon and wronged by a would-be mafia of his own ethnic group is entitled to have those claims heard and to have due process and the right to proceed in the courts of the District of Columbia and so too do those who seek to assist him;

H. That Hoai and the Hemenways have their full rights to benefit from the procedures of the D.C. Courts even in a non-Vietnamese entity, Sun, may be implicated and have to bear liability as a result;

I. That the District of Columbia Courts be enjoined to proceed in accordance with the above declarations and allow the full measure of justice to these plaintiffs with all their rights honored and their causes heard;

J. That all of the defenses and claims of these plaintiffs that are so triable be tried before a jury without allowing Sun to be dismissed from the case in the Superior Court on any pretense of violation of any *res judicata* that ignores the plan of the case imposed by the Superior Court;

K. That these plaintiffs be awarded their costs of this litigation, including counsel fees, pursuant to 42 U.S.C. § 1988.

L. An award against the defendant courts of the District of Columbia and other defendants as appropriate of all the extra costs, including counsel fees, caused directly to the plaintiff Hoai by the actions complained of.

M. Such further and other relief in law and equity as to this Court may seem meet and just.

WITH REGARD TO ALL COUNTS, PLAINTIFFS DEMAND IMMEDIATE, TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AND WILL SEEK A TRO IN SUPPORT.

PLAINTIFFS DEMAND A TRIAL BY JURY

Respectfully submitted,

_____

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CONSTITUTIONAL PROVISIONS AND STATUTES

Art. IV: Privileges and Immunities: "Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

First Amendment Right to Petition: "Congress shall make no law ... prohibiting ... the right of the people ... to petition the government for a redress of grievances."

Fifth Amendment Due Process Clause: "No person shall be ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Seventh Amendment Right to trial by Jury:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Fourteenth Amendment Equal Protection and Due Process Clauses:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper

proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive

relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1981:

(a) **Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

* * * *

(c) **Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C.§ 1988:

(a) **Applicability of statutory and common law**

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State

wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial

capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) **Expert fees**

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

APR 16 2010
OFFICE OF

Docket No. 09-843

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In The
SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al.,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA, et al.
Respondents.

On Petition for Writ of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit

APPENDIX
VOLUME 3

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Superior Court of the District of
Columbia, Motion for Hearing,
July 30, 2008 ..... Appx 118-144

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

THANH VAN VO, et al.,	]	
Plaintiffs,	]	
v.	]	Civil Action No
	]	07075-86
	]	Calendar I
THANH VONG HOAI, et al.,	]	Judge Dixon
Defendants.	]	Next event: this status conference?

MOTION FOR A STATUS CONFERENCE

We, the undersigned, acting *pro se*, request of this Court a status conference in this case, which has now been pending since August of 1986, or for over 20 years. There are motions in the case that have gone unruled upon for years. Some of them are dispositive. For example, on August 25, 1989, the undersigned filed through the then attorney for Thanh Vong Hoai and David Hemenway, with John D. Hemenway signing *pro se*, a motion to enjoin the complaint of Vo because it was filed in violation of a settlement

agreement. A transcript of the conversation embodying the settlement agreement was an attachment. It has now been pending for almost eighteen (18) years. Another, more comprehensive motion to dismiss Vo's complaint has been pending now for over seven (7) years, or since May 2, 1998.

It has been mentioned to us by opposing counsel both before when two of us were still represented by counsel, with only John D. Hemenway proceeding *pro se*, and since, that this Court has shown some acknowledgement of the impropriety of outstanding motions being unruled upon for so long. But we are interested even more in the apparent willingness of this Court to deprive us of our rights of due process and discriminate against Thanh Vong Hoai as one of us who is of an ethnic and racial minority in this country and also against the two of us who are Hemenways for having come to his aid when he was beset by a group of vicious individuals of whom the plaintiff in this cause was a ringleader and for persisting in assisting him as he has fought

to bring those who have wronged him to justice..

We note that Thanh Van Vo, the plaintiff and counterdefendant has not been seen or heard from for more than eight (8) years and possibly longer than that. A third-party defendant, Minh, we believe, returned to Viet Nam where he was killed by agents of the communist regime. His wife Minh, also a third-party defendant, has disappeared and My-Linh Soland, another third-party defendant, has served time in federal prison for violating the immigration laws. Thus the group that set upon the undersigned, Thanh Vong Hoai, and (Hoai speaking) took my service station franchise and my food business that my wife and I operated, has been broken up and it seems to be discriminatory against me, Thanh Vong Hoai, that I cannot get justice in this Court, particularly against Sun for its part in cooperating with such a gang to my harm. I was Sun's own dealer at that time as now determined by federal court decision,

In this regard we, all three of us, are most

concerned with this Court's apparent unwillingness to deal with the law of the case doctrine as it applies to Judge Weisberg's having split the claims in the case and having induced us to try our federal counter and third-party claims in the federal courts, which we did do while matters in this Court were stayed as he had suggested. He promised us that we could return here and try what was left after we tried the federal claims in federal courts. Yet this Court has resolutely refused to deal with this issue. To allow Judge Weisberg to split our claims between federal and common law or state law claims and try the federal claims in the federal court while reserving the non-federal claims, with action stayed, in this Court upon his statement and promise that we could try the common law tort type counts and state statutory counts, here, and then, when we finished in the federal courts and had the stay here lifted, to tell us that his promise was no good strikes us as clear error and, more importantly, a manifest injustice. This ability of a judge to split the claims in a case is a recognized exception in

the Restatement of Judgments that is established in the case law and yet it has been absolutely ignored to date in this case.

We did try the federal counts in the federal courts as Judge Weisberg implored us to do and, during the time that we did that, matters in this court were stayed as Judge Weisberg had stated that they would be. But when we finished in the federal court, where the success was in Thanh Vong Hoai's case against Sun under the Federal Petroleum Marketing and Practices Act (PMPA) 15 U.S.C. § 2801 *et seq.*, this Court then ignored the splitting of the claims between state and federal courts that Judge Weisberg had imposed upon the case and had thus made the law of the case. This Court did this when Sun moved for summary judgment immediately upon our reopening of this case after the long stay. Sun also revived an earlier motion from before the stay and asked to be dismissed on alleged grounds of expiration of the statute of limitations that had no basis because Sun did not set forth correct information about the filing of the case

and because it tried to subsume the common law counts filed against under the Federal Petroleum Marketing Practices Act ("PMPA") and conflate what Judge Weisberg had split.

Sun's motion for summary judgment in its favor was premised solely on the grounds that when in federal court we had not brought the very state law and common law counts that Judge Weisberg had made us keep here in this court separate from our federal claims. A large part of his rationale in imploring us to separately try our federal claims in federal court was, as he put it, to "simplify" the case in this court. Obviously, the case in this court would not be simplified if all our counter and parallel third-party claims were brought in the federal court. For that would have eliminated our claims in this court, not simplified them. Sun, in moving for summary judgment and dismissal on the grounds that it did, deliberately avoided mentioning that this splitting of the claims by Judge Weisberg. This splitting of the claims was not a choice by us subject to the doctrine that Sun cited, but was rather the choice

of Judge Weisberg, imposed upon the case and upon us by a judge of this very same court and was thus the law of the case.

This Court has now, for years, avoided addressing what Judge Weisberg said and did and has refused completely to discuss and analyze the law of the case that he set out in thus splitting the claims. At one point it promised in order to address the merits of Sun's summary judgment attempt but it in fact has never done so. We ask that it now do so, almost nine (9) years after we put this issue squarely before the Court.

Sun sought summary judgment of dismissal from this case precisely because we did what Judge Weisberg said to do and did not ignore what Judge Weisberg had told us to do, namely, split the claims in this case between state or common law claims on the one hand, and federal claims on the other and try the latter in the federal courts while the former where stayed and pending in this court on the promise of Judge Weisberg that they would be tried as what was "left over" when we finished in the federal courts.

In asking to be dismissed from this case based on what it alleged was our failure to bring the non-federal claims in the federal court, Sun did not reveal to this Court what Judge Weisberg had done, but instead briefed the matter as if Judge Weisberg had never done what he did. Sun completely failed to inform this Court of Judge Weisberg's splitting of the claims and imposing upon us the necessity of trying the federal claims in federal court in order, as he put it, to simplify this case. This amounted to attempting to "mouse trap" us for obeying the law of the case doctrine as established by Judge Weisberg. Why is it that you will not address this point? If you will not address it will you certify the issue to the Court of Appeals under Rule 54(b)? Your decision to help Sun is but interlocutory at this point and cannot be addressed by the Court of Appeals at this stage without such certification. As an interlocutory decision it is subject to being vacated or reversed at any time before trial, particularly because, in the words of many cases going back a long ways it is a decision that is

clear error and works a manifest injustice, this last particularly because it was a "mousetrapping," and as such is beneath the dignity of the Court to bless with an unexplained decision completely lacking in factual basis, analysis and reasoning and is a wrong decision that should be faced and corrected. We would like the opportunity, as *pro se* litigants, to discuss this matter with the Court. We do not understand while you will not face this issue. The refusal to face it we hope does not reflect a favoritism for Sun and a feeling against us that has become so deep that it alters your objectivity in dealing with our case. Any objective analysis of what Judge Weisberg said and what he induced us to do based on what he said, we believe, would result in your allowing not just Mr. Hoai, but the other two of us as well to proceed against Sun for the tort-type wrongs that it did us in decided to cooperate and collude with the now disappeared plaintiff Vo when he was one of the ringleaders of the Vietnamese gang that took over Mr. Hoai's businesses and threatened him with violence and death.

Respectfully submitted,

_____

Thanh Vong Hoai

_____

John D. Hemenway

_____

David Hemenway

Rule 12-I Certification

I hereby certify that I have tried to contact Robert J. Pleshaw, attorney of record for the missing plaintiff and counterdefendant Thanh Van Vo, and that he has refused to communicate with me and that I have contacted J. Gordon Forester, attorney of record for Sun Refining and Marketing (Sun) and he does/does not consent to this motion and and that I have contacted attorney of record for My Linh Soland and he does/does not agree to this motion

[signature or signatures]

CERTIFICATE OF SERVICE

We hereby certify that we have served by U.S. Mail, first class, postage prepaid, a true and

accurate copy of the foregoing upon the following:

J. Gordon Forester

Robert J. Pleshaw

Thanh Vong Hoai John D. Hemenway

MEMORANDUM OF POINTS AND AUTHORITIES

A. WHEN A JUDGE SPLITS THE CLAIMS

The Restatement of Judgments 2d sets out the General Rule that claims with their genesis in the same events may not usually be split. However, the Restatement also recognizes the exception to the general rule that a judge may split the claims in a case, reserving certain ones for further litigation after others are decided, often in a different forum, as Judge Weisberg did here. At the point where that issue came up in this case that exception in the Restatement was pointed out by the undersigned. That was in a supplemental memorandum specifically addressed to the issue and filed on June 11, 1998.

That was after this Court granted a motion to reconsider its granting of Sun's motion for summary judgment against our third-party claim against Sun. The Court granted that motion because of defects in the earlier granting of Sun's motion such as calling the earlier Sun motion unopposed when in fact the Court just had not waited until the time for an opposition had run and Sun's improperly scheduling the hearing for the motion That Order granting reconsideration was dated June 5, 1998 and it noted that a separate order treating of the merits would be issued later. However, it does not appear that the merits ever were considered.

Our supplemental memorandum setting out what Judge Weisberg had done in splitting the claims of the case and why, therefore, Sun's request to be dismissed in summary fashion for our having split the claims and not brought them all in federal court was without a basis and its omission of what Judge Weisberg had done was an attempt to mislead the Court was filed on June 11, 1998, in a few days after the Court's granting

of the reconsideration. As attachments to this supplemental memorandum which was addressed specifically to the issue of a judge in a case splitting claims as an exception to the general rule concerning the necessity of bringing all claims in a single action we set out the pertinent transcript excerpts from the two hearings in which Judge Weisberg made it clear that he wanted the claims split in this case into federal and non-federal claims. He made it clear that he wanted the federal claims tried in federal court while the non-federal claims were stayed in this court during that process and then we were to be permitted to return to this court to try all non-federal claims that were left after matters were resolved in the federal courts. For the Court's convenience, we attach a copy of that brief to this brief so that the Court may see that we squarely put before it the exception of which we speak as set out in the Restatement. On the very first page we specifically set out the section, § 26(1)(b) which states the exception as follows:

§ 26. Exceptions to the General Rule concerning splitting.

(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part of or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

(a) The parties have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein; or

(b) The court in the first action has expressly reserved the plaintiff's

right to maintain the
second action;...

The reservation of our rights to pursue the non-federal claims in this Court by Judge Weisberg can scarcely have been more express. Here is what he said in one of the two hearings, the one from September 1988, in the excerpt from that hearing that we attached to the memorandum of June 11, 1998: "Speaking only to the question of whether we can simplify the Superior Court litigation without depriving you in any way of your right to litigate the rest of it, perhaps after the Federal Court case runs its course, is there any way you can think of to do that?" Coming from the judge at that time in charge of this case, this is not a "mere suggestion," it is a command. Moreover, it is a promise that if we were to go forward in the federal courts to a conclusion, which we did, our rights to litigate the non-federal claims that we have brought in this court against counter and third-party defendants are claims that we will not

be deprived of "in any way," yet that is just what this Court has done.

The same splitting of the claims between federal and non-federal claims was again put forth by Judge Weisberg in the following year at another hearing in this court on this case on March 14, 1989. If the court will look in its files it will see that the pertinent extracts from the transcript of that hearing are also attached to the memorandum that we filed on June 11, 1998. Not only did Sun neglect to mention this splitting of the claims by Judge Weisberg in filing for summary judgment, it did not then or later cite any case as dealing with the exception to the general rule regarding not splitting claims where the splitting of the claims is imposed upon the litigation by a judge. There is substantial federal case law dealing with this exception which we would like this court to address, including a case cited by Sun as supporting the opposite conclusion of the point Sun cited it for, a decision by our own Court of Appeals.

That decision is *Washington Medical Center v. Holle*, 573 A.2d 1269, (D.C.App. 1990). *Holle*, as it has become generally known, is the case in which the District of Columbia Court of Appeals recognized the exception as set out in the RESTATEMENT OF JUDGMENTS 2d § 26(b)(2) where the judge in an earlier case splits the claims by an express statement so that some are tried but others are reserved to be tried subsequently as occurred here when Judge Weisberg split the claims at the hearings to which we refer. However, as is commonly done, the opinion in *Holle* stated the exception of § 26(b)(2) after first citing the general rule as set out in § 24 of the Restatement. Since the *Holle* opinion first sets out the general rule and then states the "well known" exception it can be cited for the general rule as well as the exception and sometimes is. Here Sun cited *Holle* along with leading cases that only set out the general rule without the exception being in issue when Sun filed its summary judgment motion in this case. Thus Sun either did not actually read the *Holle* opinion or, if it did read

the opinion, chose to ignore what it principally stands for, the recognition of the § 26(b)(2) exception for the situation where a judge splits the claims. The latter course would be consistent with its failure to mention, in seeking summary judgment based on an alleged required failure to bring all the claims in the federal court, that Judge Weisberg had split the claims in the case back when it first began in the 1980's. Sun was careful to mention a passage in which Judge Weisberg had criticized former counsel and John D. Hemenway in one of the hearings before him, indicating that it was able to research what he said when it came to a gratuitous attempt to smear opposing counsel so as to bias the Court, an impropriety this Court let slide. (We would not that what Judge Weisberg criticized counsel for in that hearing was the very point then won on summary judgment in the federal court when matters did proceed there after Judge Weisberg split the claims.)

This exception of § 26(b)(2) is well recognized in the federal case law in the Article III

courts to which we look for guidance as well as by our District of Columbia Court of Appeals. It has been recognized in the First Circuit in *Apparel Art International, Inc. v. Amertex Enterprises, Ltd.*, 48 F.3d 576, 585-586 (1st Cir.1995), and by the Seventh Circuit in a number of cases, *Central States, Southeast and Southwest Areas Pension Fund v. Hunt Truck Lines, Inc.*, 296 F.3d 624, 629 (7th Cir.2002) (recognized and applied because, as here, the reserving language was a clear expression); *In the matter of Energy Cooperative, Inc.*, 814 F.2d 1226, 1233-34 (7th Cir.1987) (recognized but not applied because the language was not a clear expression); *D & K Properties Crystal Lake v. Mutual Life Insurance Company of New York, Inc.*, 112 F.3d 257, 259-60 (7th Cir.1997) (Exception recognized but language not specific enough). There is a Fifth Circuit case as well and there has been an unreported opinion in the Sixth Circuit that is referred to in one of the Seventh Circuit opinion.

We cannot understand why you have refused to deal with the exception here and with

the clear expression of Judge Weisberg that we should split our claims between the federal and non-federal claims and pursue them in the two separate systems. Prior to the first hearing where Judge Weisberg told us to split the claims, in August of 1998, we filed our counter and third-party claims with our answer to Vo's complaint, and there were a number of tort-type common law claims against Sun. Later we amended the complaint at this court's request. We put in the federal claims at one point to protect ourselves and then, after we were able to go forward in the federal court, took them out. But the common law, tort-type claims have been here since before Judge Weisberg decided to split the claims, contrary to assertions made by Sun.

At this point we believe that you are a judge with a conscience but that for reasons we do not completely understand you have decided for years now to protect Sun and harm us, refusing to apply the law and particularly refusing to deal with the fact that Judge Weisberg split the claims in this case back in 1988 and 1989. The only

reasons for this seem to be a favoritism toward Sun based on a friendship with its counsel.

The effect is to, objectively, discriminate against us because Hoai is Vietnamese as opposed to Sun as part of the non-Vietnamese establishment along with its counsel, a man whom you know on a first name basis because of his political activities with the organized bar. Sun's counsel could have had this case dismissed as against Sun at the outset had he simply informed his client that the local statute, the RSSA, absolutely bars someone in Vo's position from suing a franchisor, but he chose instead to have his client collude with Vo, knowing, as Sun did through Peele and others of its officers, that Vo was the leader of a group that was threatening its dealer with physical violence. Contrary to Sun's misrepresentations there is no preemption by the PMPA of the common law torts that such knowing collusion with a thug comprises. Why do you not face the reality of this and of the fact that Judge Wiesberg split the claims in this case between those common law torts and offenses and the

now-established violation by Sun of the PMPA. The effect is to deprive us of our most fundamental rights of due process and our ability and right to petition for the redress of our grievances, all in violation of 42 U.S.C. § 1983 as well as violating Mr. Hoai's right to be free of discrimination under statutory law and the Constitution as well as the Hemenway's right to also be free of such discrimination for coming to his assistance. We would like to be able to have a hearing and discuss these matters.

_____

Thanh Vong Hoai

_____

John D. Hemenway

_____

David Hemenway

APPENDIX: CHRONOLOGY OF EVENTS LEADING TO THE CLAIMS

1. In the months leading up to April 10, 1986, Thanh Vong Hoai, a former intelligence officer in the Army of the Republic of South Vietnam and liaison with American military intelligence in that capacity, enters into discussions with Sun to

become their franchisee and dealer at a Sun franchise located at Pennsylvania Avenue, SE, Washington, D.C. Hoai had to flee when we abandoned his country to the communists and was resettled in a refugee camp in Oklahoma where he was trained by Phillips 66 in Service station operation and management, going on to work for major oil companies, including for Sun as a manager of company owned stations and then leaving Sun to operate several franchises as a dealer, including a previous Sun franchise in Prince Georges County, Maryland.

2. During this period leading up to April 10, 1986, Hoai meets Thanh Van Vo, another Vietnamese in American living in this area who claims to Hoai that he is a successful businessman who owns a large construction company and has owned and operated service stations and who, he claims, likes to lend funds to other aspiring Vietnamese businessmen trying to make it in America to help them get started. Ultimately, none of these representations, as it turns out, are true by Hoai accepts them at face value and introduces Vo to the late Ernest "Ernie" Peele, then the Sun Area Representative and the man with whom Hoai is negotiating on scene for the Pennsylvania Avenue SE franchise. Sun imposes a requirement of $70,000.00 in the bank in order for Hoai to obtain the franchise. Hoai raises half of this within his family and accepts the proffered loan from Vo for the other half.

3. After Hoai opens the Sun franchise and he and his wife are operating the food business in Arlington, Vo and Thach, who falsely represents

himself as owning a local bank, bar Hoai from access to the station's bank account in the guise of protecting Vo's loan (the loan does not exist). Soon Vo brings young toughs known as "cowboys" into the station and Hoai is threatened with violence and even death if he comes to his own station. In the food business, Minh and Luu, the purported sellers, stall the purchase for months. Unbeknownst to Hoai and his wife, they are acting in concert with Vo through Thach. Eventually there too Hoai is threatened with violence and murder. Young "cowboys" with Texas plates show up and, with threats of physical violence, eject Hoai and his wife from the business, taking their inventory which is all their investment in the business that they thought that they were going to be able to buy.

4. Sun, whose personnel are told by Hoai about the threats, insists that Hoai reoccupy the station or lose his franchise. Hoai's first lawyer, Soland, the present third-party defendant, unbeknownst to Hoai, is actually an attorney for Minh and Luu. She pretends to be helping Hoai while secretly assisting his oppressors.

5. Hoai, his car stopped on the side of the road, is assisted by David Hemenway, who happens to be passing by. Hoai tells David Hemenway of his plight. David Hemenway introduces Hoai to John D. Hemenway, a member of the bar. They undertake to assist Hoai in his plight.

6. In late August of 1986, after meeting with Ernest Peele, late Sun Area Representative, and obtaining Peele's signature on a notice to

surrender the premises, Hoai and the two Hemenways go to the station and ask those there to leave so that Hoai can have his station back as the legitimate dealer. Vo is not there but a cousin of his Phuly Vo, calls the police, with the approval of Hoai and the Hemenways and the police come and witness the individuals there leaving, some taking their equipment and tools.

7. The next morning, Vo returns from Toronto, where he had been when Hoai and the Hemenways entered, with a gang, including individuals brandishing weapons such as knives, and attempts to retake the station by force. Hoai and David Hemenway are there and they take refuge in the station building, whose doors they lock The gang tries to break in through the roof and rear. Inside David Hemenway calls 911. The police come, as do John D. Hemenway and Vo's lawyer, Arif. There is a verbal confrontation and the parties agree to meet the next day and have Ernest Peele there as Sun's Area Representative, to state who is the owner of the franchise, the Sun dealer, and abide by Peele's pronouncement on that point.

8. The following morning the parties meet in the presence of Peele. Peele pronounces that Hoai is Sun's dealer and the owner of the franchise.

9. Vo purports to be abiding by this decision and Arif stays behind for a while at the station purportedly to take an inventory of what Vo purchased in the station's inventory. In reality this is a ruse because Vo obtains other counsel and prepares this suit in its original form (without any

count of wrongful eviction) against us and against Sun.

10. Vo files suit and his new attorneys request a TRO. At the TRO hearing, which goes on for two days because the judge, Judge Wagner, has to break off the first day to go to the hairdresser's, Judge Wagner ignores testimony of Peele about the plaintiff and his colleagues talking of breaking Hoai's legs and announces that what she is interested in is wrongful eviction, an area of law she is familiar with from private practice and makes it clear that she thinks Sun, Hoai and the Hemenways have engaged in wrongful eviction. Vo and his attorneys obligingly follow her predisposition and agree to seek such a charge. She grants a TRO for wrongful eviction to last for 10 days and requires a bond..

11. Vo, despite his lawyers promising cash or counsel check, "posts" the bond with an NSF check drawn of the account of the account of the station.

12. As the TRO approaches expiration, Sun and Vo, without notifying Hoai or the Hemenways or their counsel, makes a private agreement with Vo to hand over the franchise to him under the pretense that the judge made them do it. Taking advantage of the then procedure for a judge-in-chambers, they get another judge to sign this private agreement as a "Consent Order," although only they have consented to or even been notified of it..

13. Under the guise of having to obey this private agreement, Sun effectively gives the franchise to Vo for the rest of its term, then notifies

Hoai that his franchise is being terminated because of his troubles with Vo. Eventually Hoai obtains a judgment against Sun in federal court for wrongful termination under the PMPA.

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

THANH VAN VO, et al.,	]
Plaintiffs,	]
v.	]CA No. 07075-86
	]Calendar I
THANH VONG HOAI, et al.	] Judge Dixon
Defendants.	] Next event: this Status Conference?

ORDER

The Court, having considered the motion of the defendants and counter and third-party plaintiffs for a status conference, and the opposition thereto and the reply to that opposition, and argument on the same, now hereby,

GRANTS the motion, and a status conference will be held in this case on _____.

_____
Herbert B. Dixon, Superior Court Judge

Docket No 09-843

SUPREME COURT, U.S.
APR 16 2010

THE SUPREME COURT OF THE UNITED STATES

THANH VONG HOAI, et al ,
Petitioners

v.

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA, et al
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR RECONSIDERATION

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TREATISE

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PETITION FOR RECONSIDERATION

I MATTER NOT PREVIOUSLY PRESENTED CONCERNING THE PMPA

In the petition for certiorari petitioners did not present the important question under the Petroleum Marketing Practices Act (PMPA) (15 U S C §§ 2801 *et seq*) that is presented by their case as it interacts with the declaratory judgment that was violated by the defendants in their case This embraced by their Questions Presented 10, 12, and 13 but was not presented It is significant, and petitioners maintain, important, for this Court to address this question in light of its recent decision on the PMPA in *Mac's Shell Service, Inc v Shell Oil Products,* LLC (slip opinion March 2, 2010) There the Court rendered an important ruling on the question of constructive termination under the PMPA This case presents an equally important question under the PMPA on the question of damages when there is clearly an illegal termination under the PMPA

This important question under the PMPA here ties directly to the question presented of the violation of a declaratory judgment, which in this case was a decision by the local municipal court, the Superior Court of the District of Columbia, that the petitioners should split their claims between their state common law claims for the damage caused by the illegal takeover of the service station franchise in question and its illegal termination and the federal claim for the illegal termination under the PMPA With this declaration the Superior Court

effectively mandated these petitioners to take their federal claims, split them out from their federal claims and pursue the federal claims in the federal courts, which the petitioners did These facts were alleged by the petitioners in their complaint below in this case And since their case was dismissed under Rule 12(b)(6), must be taken as true See Appx , Vol I, pp 35-36 This declaratory relief was noted by the United States Court of Appeals for the District of Columbia Circuit in *Hoai v Sun Refining and Marketing Company, Inc* , 866 F 2d 1515 (D C Cir 1989) [1]

This declaration allowing the petitioners to split their claims between their state and federal claims, and particularly the federal PMPA claim was also taken notice of and petitioners ask this Court to take judicial notice, was then completely violated by the respondents when Hoai did win his PM)PA case and the petitioners returned

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[1] Finally, it appears that the Superior Court judge himself wished to simplify the case in his court by separating out the federal claims In a scheduling conference on September 16, 1988, the judge suggested that the issues arising out of the dispute between Hoai and Vo could be severed out of this case and tried here preserving all the other issues that make this case more complicated about the behavior of Sun Oil and the franchise agreements and whether or not the franchise could be transferred in violation of the Petroleum Marketing Act Transcript of Scheduling Conference at 24, Vo v Hoai, Civ No 7075-86 (D C Sup Ct Sept 16, 1988), see also id at 27 ("Speaking only to the question of whether we can simplify the Superior Court litigation and expedite part of this case at least without depriving you [Hoai's counsel] in any way of your right to litigate the rest of it, perhaps after the Federal Court case runs its course, is there any way you can think of to do that?") Certainly, the Superior Court did not appear to view the exercise of federal jurisdiction as an attack on its sovereignty or as lacking in "comity "

to the Superior Court of the District to try the rest of their claims, the common law ones as it had been declared that they could do App 36

This violation of the declaratory relief thus accorded the petitioner Hoai relates to the material not previously presented concerning damages under the PMPA in that the judge below in the petitioner Hoai's PMPA case, when it was remanded after the interlocutory reversal just noted ruled that the common law, non-federal claims of the petitioner Hoai could be pursued only if brought separately and the damages that they entailed, would have to be pursued in those separate tort claims See decision of Honorable Louis F Oberdorfter in *Hoai, supra*, 1991 U S Dist LEXIS 5977 (D D C May 1, 1991) This decision made it imperative for the petitioner Hoai that he be allowed to pursue his tort damages claim, common law claims back in the Superior Court of the District of Columbia where they were pending, having been stayed along with the claims of the other two petitioners, at the time

II THE PMPA UNDERMINED BY THE CIVIL RIGHTS VIOLATIONS

The PMPA was intended to balance the disparity between the enormous bargaining power of the large oil companies and their dealers and to prevent "contracts of adhesion" and wrongful terminations Here it allowed a remedy, albeit a limited one, for the wrongful termination, but was then, by the civil rights violations and the violation of the right to access to the courts

complained of in this case to be sued as a sword to enable Sun to knowingly participate in the tortuous acts of the aspiring ethnic mafia involved without incurring any responsibility for those greater wrongs with their far greater damages Thus, the declaratory relief of being able to split the claims between federal statutory claims and common law claims with the federal claims to be tried first with the common law claims in the Superior Court stayed, and the petitioners promised that they might return to the Superior Court after resolution of the federal claims in the federal court and try the common law claims, when violated by the respondents and defendants in this case, completely frustrated the language and intent of the PMPA and allowed Sun to use it as a sword rather than the shield it was intended to be

This misuse of the PMPA was a direct result of the civil rights violations of the respondents and defendants below in deferring to the status of Sun and acting against the rights of a Vietnamese in a reversal of the famous dictum of Sir Henry Maine in "The Ancient Law " It was in effect, a movement away from the Rule of Law to a deference to status It was thus a reversal of the intended effect of the civil rights laws and a betrayal of them Courts and judges should not be free to declare a rule for the case and then betray it to help out an entity because of deference to it that is unwarranted Here that also betrays the intent of the PMPA

Every immigrant ethnic group is plagued with those that wish to emulate the mafia and prey upon their own

Here, the defendants below and respondents first assisted the aspiring mafia, and then absolutely refused and still refused, to allow the petitioners to right that wrong within the municipal court system Service station franchises are frequently obtained by immigrant entrepreneurs seeking success in America It is important that the judges of the municipal court system of the capital of the nation and that court system be put on notice that this wrong will be rectified We promote the Rule of Law as a pillar of our foreign policy It is important to see that it prevails in the nation's capital in this important area of industry Municipal judges, particularly those in the capital of the country, need to be conversant with and not pervert the effect of significant federal statutes such as the PMPA and not deprive litigants of their right to be properly and lawfully treated under those statutes Here the ignoring of the laws governing service station franchises created the events that led to the denial of access to the courts in the first instance

It would be a great wrong to allow the municipal courts involved to compound that error and not observe the civil rights of the petitioners We would suggest that straightening out these matters with regard to the PMPA, which we now present for the first time, is of sufficient importance to justify the attention of this Court to the civil rights violations that are presented by this case

III NEW MATTER ON THE DENIAL OF ACCESS TO THE COURTS

Another matter here presented for the first time relates directly to this failure to observe and enforce the civil rights of the plaintiffs/petitioners in that it makes evident the determination of the defendant/respondent courts and judges to not grant the petitioners any actual meaningful and adequate access to the municipal courts of the District of Columbia On July 31, 2007, after this case had been proceeding for some time in the federal courts the petitioners moved in the Superior Court for a status conference in an effort to persuade the Superior Court to actually do something with their defenses and motions and claims that at that point had been pending there, some of them since 1986 See Appendix III, p 118 ff This motion was never opposed As with every motion, defense and claim of the petitioners, this motion too has been ignored Thus the respondents and defendants below have made inescapably clear that they mean to deny the petitioners any access to the courts of the District of Columbia and hope, as the respondent Dixon put it, that the petitioners will eventually "go away," by either dying or formally giving up rather than continue to pursue their right f access to the courts We would respectfully suggest that this resolute determination to deny the rights of the petitioners makes this a case which should be considered by this Court

Respectfully submitted,

_____

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CERTIFICATE OF GOOD FAITH

I hereby certify that I am filing this petition, as entering counsel in good faith and with no intention of delaying proceedings

_____

Laurence A Elgin